Supreme Court, U. S.
FILED
JUN 18 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. ... 78-1869

OCTOBER TERM, 1979

DON REHAHN, et al.,
Petitioners,
vs.
GENERAL MOTORS CORPORATION
and LOCAL UNION 160, UAW,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

DAVIDOW & DAVIDOW
By: LAWRENCE S. DAVIDOW
2910 Book Tower
Detroit, Michigan 48226
Tel: 313-962-9144

Interstate Brief & Record Co., Wurlitzer Bldg., 1509 Broadway, Detroit, MI 48226
962-8745 962-8746

TABLE OF CONTENTS

	Page
Index to Authorities	ii
Petition of Plaintiffs for Writ of Certiorari	1
Opinions and Orders Below	2
Jurisdiction	2
Questions Presented for Review	2
Concise Statement of Case	3
Removal from Circuit Court of Wayne County, Michigan to U.S. District Court by Defendants	6
Defendants' Motions for Summary Judgment	6
Rulings of the Lower Court	10
Reasons for Granting Writ	11
Íssues Involved	11
Erroneous Assertions of Alleged "Facts" by 6th Circuit Court of Appeals	26
Conclusion	29
Appendix	A1

INDEX TO AUTHORITIES

Page

Cases:

Adickes v Kress Co., 398 US 144, 26 L Ed 2d 142, 154 (1970) 15

Bishop v Wood, 426 US 341, 48 L Ed 2d 684, 96 S Ct 2074 (1976) 15

Fitzsimmons v Best, 528 F2d 692, 694 (1976) 13

Hines v Anchor Motor Freight Inc., et al., 424 US 554, 47 L Ed 2d 231, 96 S Ct 1048 (1976) 3,10,22,25,28,29

Hughes v American Jawa, Ltd., 529 F2d 21, 23 (1976) 14

Jenkins v McKeithen, 395 US 411, 23 L Ed 2d 404, 89 S Ct 1843 (1969) 14

Poller v Columbia Broadcasting System, 368 US 464, 7 L Ed 2d 458 (1962) 15

Redhouse v Quality Food Sales Inc., 511 F 2d 230 (1975) 16

Other Authority:

Rule 8(a),(e)(1),(f), Federal Rules of Civil Procedure 19,20

IN THE

Supreme Court of the United States

No. ...

OCTOBER TERM, 1979

DON REHAHN, et al.,
Petitioners,
vs.
GENERAL MOTORS CORPORATION
and LOCAL UNION 160, UAW,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners respectfully pray that a Writ of Certiorari be issued out of this Court to review the Judgment of the Sixth Circuit Court of Appeals of February 16, 1979, affirming the Summary Judgment of the U.S. District Court of Michigan, Eastern District, and the March 19, 1979, Order of the Sixth Circuit Court of Appeals denying petitioners' application for rehearing, in pursuance of Section 1254, Title 28, U.S.C.A. - Petition for Writ of Certiorari, in a Civil Proceeding.

OPINIONS AND ORDERS BELOW

The Opinion of the District Court granting Summary Judgment to Defendants, the Order and Opinion of the Court of Appeals for the Sixth Circuit affirming the Summary Judgment, and its Order and Opinion denying petitioners Petition for Rehearing have not been reported. They are printed in the Appendix hereto appended, (pp A1-A11).

JURISDICTION

The Orders of the Court of Appeals for the Sixth Circuit, affirming the Summary Judgment and denying Petitioners' petition for rehearing were entered February 16, 1979 and March 19, 1979, respectively. The petition for rehearing was timely filed.

QUESTIONS PRESENTED FOR REVIEW

1.

Did the District Court and the Sixth Circuit Court of Appeals disregard the often repeated rule of law that Summary Judgments may not be granted where there are material disputed questions of fact involved?

2.

Did Petitioners' Complaint state a cause of action for which relief should be granted?

3.

Were there collusion and actions in concert between defendants resulting in the violation of Chapter 59 of the Labor-Management Agreement (Plant Seniority)? Printed in Appendix hereto appended (p A-12).

4.

Did Petitioners exhaust their remedies within the Union?

5.

Were Petitioners' entitled to receive fair representation by the defendant Local Union?

6.

Were the Summary Judgments granted to defendants by the District Court, and affirmance by the Sixth Circuit Court of Appeals and denial of petition for rehearing, contrary to and in disregard of the decision and rulings of this Court in the case of *Hines* v *Anchor Motor Freight, Inc.*, 424 US 554, 47 L Ed 2d 231, 96 S Ct 1048 (March 3, 1976)?

CONCISE STATEMENT OF THE CASE

Defendant Local Union 160, affiliated with the International Union UAW, is the Union to which all of the Plaintiffs belonged during all of their employment and still do now belong.

INFLUX OF MEMBERS IN LOCAL 160

Prior to Petitioners' discharge, Local 160 was a small local, whose members were employed at GM's Tech Center, Warren, Michigan. A large number of employees of GM who had been employed at Ternsted's in Detroit, making hardware for G.M., were transferred to the Tech Center and became members of Local 160, becoming an overwhelming majority of several thousands of the membership in said local, in contrast to the small number of Petitioners.

DISCHARGE OF PLAINTIFFS

Petitioners, 36 in number, with seniorities as experienced "journeymen", employees of Defendant General Motors as of August 20, 1974, ranging from 17 to 31 years at the time of starting their suit, were discharged or (laid off) upon the claim that the work done by them had been discontinued. The local union wrongfully acquiesced in this action, in violation of Chapter 59 of the Union-Management Agreement, (Plant Seniority) (Appendix A12). Petitioners denied the claim of defendants, alleging that the work they had been doing was being done by others after their discharge.

Plaintiffs, by reason of the improper behavior of the defendants, were out of work for a substantial period of time, during which they had been unable to secure comparable employment. That claim for damages for wages lost by each of the plaintiffs is set forth as follows:

ESTIMATED PERSONAL LOSSES

Donald Rehahn	$32,000
Harry Larkins	$20,000
Xavier Bonkowski	$20,000
Jack D. Cornett	$20,000
Edwin Januszkowski	$32,000
Walter Obrenci	$32,000
Lawrence Traub	$32,000
Alex Bell	$32,000
Howard Casey	$26,000
Donald Ralston	$35,000
Leland Bartlett	$26,000
Charles Murphey	$26,000
Joseph Wojtan	$26,000
Adolph Uruski	$26,000
Thomas Wooley	$26,000
Mike Folksa	$26,000
Donald Wisniewski	$26,000
Gaythorne Bland	$26,000
Wilson Eleinko	$26,000
Archie Bozick	$26,000
Frank Johns	$26,000
George Toth	$20,000
Tony Amella	$26,000
Ray Rhodes	$26,000
Abel Leuchter	$26,000
William Long	$35,000
John Stumpf	$35,000
Bernard Charboneau	$45,800
Milton Motherwell	$26,000
Henry Dara	$26,000
Edward Wojciechowski	$26,000
Michael Kouri	$26,000
Marvin Elliot	$26,000
David Wyckoff	$26,000
James Gorski	$26,000
Kenneth Larkins	$26,000

Petitioners charged the defendants with collusion, resutlting in their violation of the provisions of the Union-Management Agreement alleging that Plaintiffs were being deprived of their valuable rights of plant seniority, secured by the Union-Management Agreement, Paragraph 59 (supra), and acquiesced in by defendant local union, amounting to improper and unfair representation by the Defendant local union.

REMOVAL OF ACTION TO U.S. DISTRICT COURT

Petitioners-Plaintiffs instituted their suit by filing their complaint and demand for jury trial in the Circuit Court for Wayne County, Michigan, on August 28, 1974. Defendants filed motions to remove the action to the U.S. District Court for the Eastern District of Michigan on the claim that the District Court had original jurisdiction by virtue of the Labor-Management Relations Act, 29 USC par. 185.

Plaintiffs filed their objections to the removal on the ground that the District Court did not have exclusive jurisdiction — that the jurisdiction was concurrent, and they had chosen the forum, the Circuit Court for Wayne County, where it should remain. The District Court granted removal.

DEFENDANTS FILE MOTIONS FOR SUMMARY JUDGMENT

Defendant General Motors filed its answer denying petitioners' allegations, and alleging that petitioners' complaint failed to state a claim for which relief could be granted. It alleged affirmatively that the grievance of

petitioners had been determined by arbitration — that they had not exhausted their remedies within the union — that they had failed to particularize their claim of fraud.

PLAINTIFFS' REPLY

Plaintiffs-Petitioners filed their answers to the affirmative matter contained in G.M.'s Answer, and the affirmative defenses (9/26/74) charging that the proceedings ostensibly taken by defendant local union in their behalf amounted to a fraud upon them, by reason of the collusion between the defendants; that they had not been fairly and impartially represented, etc.

DEFENDANT UNION MOTION TO DISMISS

Defendant local union did not file an answer, but filed its motion to dismiss or for summary judgment on the ground that plaintiffs' (Petitioners) complaint failed to state a claim upon which relief could be granted. (11/1/74). Affidavits were submitted in support of the motion. Defendant also alleged and claimed that the arbitration was final — that the action was barred by the State of Michigan's limitation of actions; the affidavits denied plaintiffs' allegations and charges.

Defendant General Motors then filed its Motion for Summary Judgment (Dec. 6, 1974).

PLAINTIFFS' ANSWERS TO DEFENDANTS' MOTIONS

Plaintiffs (Petitioners) filed their detailed answers to the motions of defendants, including exhibits and affidavits (12/30/74) denying the allegations of said motions, affirmatively asserting their claims for relief.

Memorandum Opinion of the District Court was filed February 13, 1976, appended hereto. (Appendix A1).

The International Union had directed Defendant Local Union 160 to support Plaintiffs' status in their seniority rights. Defendant Local 160, working in collusion with Defendant General Motors, refused, despite the fact that layoff of Plaintiffs was in violation of Paragraph 59 and Section 220, p. 133, of the Union-Management Agreement, which provides:

> "No provisions of any local agreements between local Plant Management and Shop Committees therein shall supersede or conflict with any provisions of this Agreement."

RE: ARBITRATION

The International Union neither initiated nor processed the arbitration inasmuch as it had already indicated its support of Petitioners' (Plaintiffs) position on Section 59 of the Union-Management Agreement, and had so advised Defendant Local Union.

At the arbitration hearing, Plaintiffs (Petitioners) had sought to testify as to their status and classification

of "journeymen" over a long period of time prior to the influx of the Ternstedt group into the defendant local union. They were prevented by defendants from so doing on the ground that it had been agreed between the representative of defendant local union and defendant General Motors that the matter of classification was not to be raised.

The local union's representative advised Plaintiffs that raising this question would be detrimental to their position and Plaintiffs, relying upon this advice, were lulled into a false sense of security that their rights were being protected.

The Umpire had no right to pass on the seniority status of the Plaintiffs by reason of the express terms of the Union-Management Agreement, Paragraph 46, Union-Management Agreement, re Umpires in Arbitration hearings, inter-alia, provides:

> "The umpire shall have no power to add to or subtract from or modify any of the terms of this Agreement or any agreement made supplementary hereto."

The arbitration proceeding was arbitrary and amounted to a fraud against the Plaintiffs.

The reinstatement to employment of Plaintiffs was in derogation of the status of "journeymen" with a long plant-seniority status at the Tech Center Plant. Their "journeymen" seniority status was destroyed and they were placed at the bottom of the employment status (EITS) having to start seniority all over again as if they had just been originally employed.

Many of the Plaintiffs were recalled to employment at the Tech Center but under the lowest status as beginners (EITS). This occurred July, 1974, after it was made known to both defendants that Plaintiffs had retained Larry S. Davidow as their attorney to pursue their complaint against the defendants. As a prerequisite to their re-employment they were to abandon their claim which would be effective only in the event that all of the Plaintiffs would so agree. All of the Plaintiffs did not agree so there was no valid agreement. Petitioners then instituted action as hereinabove described.

RULINGS OF LOWER COURT

Following argument of respective counsel on defendant's motions for Summary Judgment, said motions were taken under advisement by the District Court. The Opinion of the District Court was filed February 13, 1976, granting Summary Judgment to the defendants against Plaintiffs.

Motion of Plaintiffs for rehearing in the District Court, calling attention of the Court to the then most recent decision of this Court on the issues involved, *Hines* v *Anchor Motor Freight, Inc., supra,* was timely filed. The motion was denied. (Appendix A6). Plaintiffs timely filed their appeal to the Sixth Circuit Court of Appeals.

The Sixth Circuit Court of Appeals affirmed the lower Court (Appendix A10) and denied Plaintiffs' (Petitioners) motion for rehearing (Appendix A10).

REASONS FOR GRANTING WRIT

1. The decision of the U.S. District Court in the instant case granting the motions of the Defendants for Summary Judgment, and in denying Plaintiffs' motion for rehearing, are in conflict with many cases decided by and reported in the decisions of this Court, particularly the decision of this Court in the case of *Hines* v *Anchor Motor Freight, Inc., et al,* 424 US 554, 47 L Ed 2d 231, 96 S Ct 1048 (1976).

2. The opinion and rulings of the U.S. Court of Appeals for the 6th Circuit is in conflict, in the instant case, with many decisions of other U.S. Courts of Appeals.

3. The U.S. District Court and the 6th Circuit Court of Appeals in the instant case have departed from the accepted and usual course of judicial proceedings in reference to Motions for Summary Judgment.

4. The U.S. 6th Circuit Court of Appeals, in its decision and rulings in the case at bar, has sanctioned such departure by the U.S. District Court, all of which calls for the exercise of this Court's power of supervision.

ISSUES INVOLVED

1.

Did the District Court and the Sixth Circuit Court of Appeals disregard the often repeated rule of law that Summary Judgments may not be granted where there are material disputed questions of fact involved?

Petitioners respectfully submit that it has been the accepted rule of law over a long period of time and continuing to the present time, that motions for summary judgment may not be granted where there are material disputed questions of fact.

We herewith submit a few of the material disputed questions of fact which the lower courts have ignored:

(a) Plaintiffs deny the Defendants' claim of the defense of limitation of actions.

(b) Plaintiffs deny defendant local union claim that the representative handling the hearing before the Umpire was the representative of the International Union, which is not a party in the case.

(c) Plaintiffs deny Defendants' claim they did not exhaust their inter-union remedies.

(d) Plaintiffs deny the Defendants' claim that there was no failure on the part of the local union to properly and fairly represent the Plaintiffs in their grievance.

(e) Plaintiffs deny the Defendant GM's claim that the elimination of the work-classification of Plaintiffs, which resulted in their lay-offs, was due to their services no longer being required.

(f) Plaintiffs deny Defendants' claim that the "Agreement" signed by some of the Plaintiffs at the time of their belated recall promulgated by GM in 1974, and acquiesced in by defendant Local Union, shortly prior to the institution of the instant suit, bars Plaintiffs' action.

MATERIAL FACTS ENTITLING PLAINTIFFS TO RELIEF

(a) There can be no denial of the fact that the International Union Executive Board had agreed and supported the position of the Plaintiffs, and had ordered Defendant Local Union to follow through to grant them their seniority rights (Appendix A16, A17).

(b) It cannot be denied that the issue of seniority is a vital one.

(c) Plaintiffs over the years of employment as journeymen for Defendant General Motors had as of August 28, 1974, earned seniority ranging from 17 to 31 years.

(d) The rights of seniority were embodied in Paragraph 59 of the 1970 Union-Management Agreement, to which Plaintiffs were entitled.

(e) The EITS classification, which was imposed upon Plaintiffs after being unemployed for several years, stripped them of their respective seniorities and reduced them to the status of beginning apprentices, with no seniority, to start at the bottom of the seniority ladder, in violation of Paragraph 59 of the Agreement, *supra*.

> *FITZSIMMONS* v *BEST*, 528 F2d 692, 694 (1976).
>
> "Thus, summary judgment is appropriate only if it appears that 'there is no genuine issue as to *any material fact* and that the moving party is entitled to a judgment as a matter of law.' F.R. Civ. P. 56(c); Poller v Columbia Broadcasting System, 368 U.S. 464, 82 S Ct 486, 7 L Ed 2d 458 (1962). For the purpose of determining whether

any material fact remains disputed, *'the inferences to be drawn from the underlying facts. . . .must be viewed in the light most favorable to the party opposing the motion.'* " (Citing cases) (emphasis ours)

HUGHES v *AMERICAN JAWA, LTD*, 529 F2d 21, 23 (1976).

"Summary judgment should be entered only when the pleadings, depositions, affidavits, and admissions filed in the case 'show that (except as to the amount of damages) there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' Rule 56(c) Fed. Rules Civ. Proc., 28 USCA. This rule authorizes summary judgment 'only where it is quite clear what the truth is, . . .(and where) no genuine issue remains for trial. . . (for) the *purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try.'* " (Citing cases) (our emphasis)

JENKINS v *McKEITHEN*, 395 US 411, 23 L Ed 2d 404, 89 S Ct 1843, 416 (1969).

"*For the purposes of a motion to dismiss, the material allegations of the complaint are taken as admitted.* See, e.g. Walker Process Equipment, Inc. v Food Machinery & Chemical Corp., 382 US 172, 174-175, 15 L Ed 2d 247, 249, 250, 86 S Ct 347 (1965). And, *the complaint is to be liberally construed in favor of plaintiff*. See Fed. Rule Civ. Proc. 8 (f); Conley v Gibson, 355 US 41, 2 L Ed 2d 80, 78 S Ct 99 (1957). The complaint should not be dismissed unless it appears that appellant

could "prove no set of facts in support of his claim which would entitle him to relief." Conley v Gibson, supra, at 45-46, 2 L Ed 2d at 84. With these rules in mind, we turn to examination of the allegations of appellants complaint." (our emphasis).

BISHOP v *WOOD*, 426 US 341, 48 L Ed 2d 684, 96 S Ct 2074, 691 (1976).

"In our appraisal of petitioner's claim we must accept his version of the facts since the District Court granted summary judgment against him."

ADICKES v *KRESS & CO*, 398 US 144, 26 L Ed 2d 142, 154 (1970).

"We think that on the basis of this record, it was error to grant summary judgment. As the moving party, respondent had the burden of showing the absence of a genuine issue as to any material fact, and *for these purposes the material it lodged must be viewed in the light most favorable to the opposite party.*" (our emphasis)

POLLER v *COLUMBIA BROADCASTING SYSTEM*, 368 US 464, 7 L Ed 2d 458, 461-4 (1962).

"Summary judgment should be entered only when the pleadings, depositions, affidavits, and admissions filed in the case 'show that (except as to the amount of damages) there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law' . . .where it is quite clear what the truth is. .(and where no genuine issue remains for

trial) *for the purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try."* (Citing cases) (our emphasis)

* * * *

"It may be that upon all of the evidence a jury would be with the respondents. But we cannot say on this record that 'it is clear what the truth is'. . .We look at the record on summary judgment in the light most favorable to Poller, the party opposing the motion, and conclude here that it should not have been granted. . .Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of 'even handed justice.' "

REDHOUSE v *QUALITY FORD SALES, INC.*, 511 F 2d 230, 234 (1975).

"Summary judgment does not serve as a substitute for trial, nor can it be employed so as to require parties to litigate via affidavits." (Citing cases)

"It is considered a drastic relief to be applied with caution. . .pleadings, therefore, *must be liberally construed in favor of the party opposing summary judgment."* (Citing cases) (our emphasis)

* * * *

"Appellant courts must consider factual inferences tending to show triable issues *in a light most favorable to the existence of such issues."* (emphasis ours)

2.

Did Petitioners' (Complaint state a cause of action for which relief should be granted?

Petitioners respectfully submit that their Complaint does state facts and circumstances to support their action. There are 36 individual plaintiffs joined together for the purpose of the suit asserting their rights to relief jointly and severally arising out of the same facts, circumstances and occurrences, questions of fact and law, all of which are common to all of them individually and severally. They allege:

(a) The specific years of seniority as employees of General Motors accumulated by each of them ranging from 17 to 31 years;

(b) They are all members of defendant local union 160 of the UAW and had been members of the union during all of their employment up to and including the present time;

(c) The Union-Management Agreement in existence in 1970;

(d) The Executive Committee of the International UAW recognized Plaintiffs' right to protection under Paragraph 59 of the Union-Management Agreement.

(e) That by reason of certain collusive tactics on the part of Defendants, Plaintiffs were led into an arbitration hearing which amounted to a fraud and a farce, inasmuch as a proper presentation of Plaintiffs' case was not permitted by the defendants, particularly as it related to their classification of employment and rights of seniority.

(f) That the hearing before the Umpire was under the control of Defendants and Plaintiffs were persuaded to follow the advice of the local union representative which worked a fraud upon Plaintiffs.

(g) That the Umpire did illegally and contrary to the Union-Management Agreement find that Plaintiffs were not journeymen, contrary to the provisions of Paragraph 59 of the Union-Management Agreement. (Par. 46, Union-Management Agreement, supra)

(h) That the action of the defendants in the procedure before the Umpire was fraudulent and based upon predetermined and collusive action between the defendants.

(i) That the status of seniority was one of the most important rights of employees inasmuch as the greater the seniority, the greater the likelihood of unbroken employment.

PLAINTIFFS' RIGHTS UNDER RULE RE MOTIONS FOR SUMMARY JUDGMENT

That adhering to the general rule often repeated and upheld, all material allegations in the complaint must be accepted as true for the purpose of a motion for summary judgment (and all legitimate inferences therefrom) must be decided in favor of the person opposing the motion, here, the Petitioners in the case at bar.

Defendant General Motors' answer denied the allegations of the Plaintiffs. It affirmatively stated that the Plaintiffs failed to state a claim upon which relief could be granted, and further claimed that Plaintiffs had failed to particularize circumstances constituting fraud and had failed to exhaust internal union remedies.

Plaintiffs filed their answer to the affirmative allegations and stated that Plaintiffs were lulled into a false sense of security that their rights would be properly protected, which events subsequently indicated were not protected.

Defendant local union filed no answer. It filed its motion to dismiss and/or summary judgment alleging the same reasons as claimed by defendant General Motors.

RULE OF LAW

Petitioners respectfully submit that these several motions for summary jugment and/or to dismiss their complaint and answers of Petitioners thereto clearly demonstrate that there are indeed a number of material disputed questions of fact which must be accepted as true; that all reasonable inferences therefrom must be viewed in the light most favorable to the Petitioners opposing the motions. The lower Courts completely disregarded this rule.

Petitioners claim that it was and is not required of them to set forth testimony which would or could be presented through witnesses in depositions and discovery and upon trial.

Rule 8 (a) of the Federal Rules of Civil Procedure as Amended provides:

> "Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, . . .shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, . . .(2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled."

* * * *

(e) (1) Each averment of a pleading shall be simple, concise and direct. No technical forms of pleadings or motions are required.

(f) Construction of pleadings. *All pleadings shall be so construed as to do substantial justice."* (Our emphasis)

Petitioners' claims for damages covered wages they would have individually earned and were deprived of during the long period of time during the discharge (layoff). If defendant union had properly and fairly represented them in accordance with Paragraph 59 of the Labor Management Agreement, said Petitioners would not have been discharged (laid off), their seniority would not have been adversely affected, and they would not have suffered any loss.

3.

Were there collusion and actions in concert between Defendants resulting in violation of Chapter 59 of the Labor-Management Agreement, (Plant Seniority)?

Petitioners respectfully submit that while defendants deny collusion charged by Plaintiffs, the facts and circumstances lead to the ineluctable conclusion that there was collusion and concert of actions between the defendants, as demonstrated by the proceedings before the Umpire in the farcical arbitration hearing and their refusal to follow the ruling of the International Executive Board of the UAW.

Obviously, only testimony taken on deposition or discovery and upon trial can bring forth the truth of the facts in this case. Summary judgment stripped Plaintiffs of their day in Court.

The Umpire during the arbitration hearings exceeded his power and authority when in effect he vitiated Paragraph 59 of the Union-Management Agreement and Paragraph 46 of the Labor Management Agreement having reference to power of arbitration:

> "No provision of any local agreements between local Plant Managements and Shop Committees therein shall supersede or conflict with any provisions of this Agreement."

(After the Umpire's decision, Joseph Malotke, Plant Chairman of Defendant Local Union, told some of the plaintiffs, "that if he had been on our side, the Template Makers, meaning Plaintiffs, would not have lost the Umpire Decision.)

4.

Did Petitioners exhaust their remedies within the Union?

Petitioners respectfully submit that a review of the matters contained in the joint appendix filed in the U.S. Court of Appeals for the Sixth Circuit Court clearly shows that they had exhausted the remedies afforded them by the International UAW.

The Executive Board of the UAW had agreed that the Plaintiffs were entitled to the benefits and rights of Paragraph 59 of the Union-Management Agreement. The Local Union in concert with Defendant GM refused to abide by said ruling. Defendants sought to have plaintiffs withdraw their grievance, without success.

5. & 6.

Were Petitioners entitled to receive fair representation by the defendant Local Union?

Petitioners respectfully submit that questions 5 and 6 can be merged for the purpose of showing jurisdiction of this Court to grant Writ of Certiorari.

The District Court, after hearing the argument of respective counsel on the motions of defendants for summary judgment, on January 6, 1975, took the matter under advisement. Subsequently on February 13, 1976, the Court entered an order granting the motions of defendants for summary judgment. Judgments were entered accordingly. Thereafter, motion for new trial-rehearing was timely filed on behalf of Plaintiffs (Petitioners) on February 20, 1976. The District Court denied the motion for new trial-rehearing. Petitioners timely filed their appeal to the Sixth Circuit Court.

Hines v *Anchor Motor Freight, Inc.*, 47 L Ed 2d 231, 238, 239, 241, 243, 244 (decided March 3, 1976). (Reported in the Advance Sheet edition of April 9, 1976).

Plaintiffs charged breach of the collective bargaining agreement, and breach of fair representation by the union. The District Court granted summary judgment in favor of the defendant union, and denied the employer's motion. The Court of Appeals reversed as to the union, but affirmed as to the employer. The Supreme Court reversed as to the employer and remanded the case, holding that plaintiffs could recover from both union and employer if they could sustain their cause of action by proofs.

"Although indicating that the acts of the Union 'may not meet professional standards of competency, and while it might have been advisable for the Union to further investigate the charges, . . . the District Court concluded that the facts demonstrated at most bad judgment on the part of the Union, which was insufficient to prove a breach of duty or make out a prima facie case against it.

After reviewing the allegations and the record before it, the Court of Appeals concluded that there were sufficient facts from which bad faith or arbitrary conduct on the part of the local union could be inferred by the trier of fact and that petitioners should have been afforded the opportunity to prove their charges.

The duty of fair representation has served as a 'bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress by the provisions of federal labor law.' (Vaca v Sipes)

Claims of union breach of duty may arise during the life of a contract when individual employees claim wrongful discharge or other improper treatment at the hands of the employer. Contractual remedies, at least in their final stages controlled by union and employer, are normally provided; yet the union may refuse to utilize them or if it does, assertedly do so discriminatorily or in bad faith. The problem then is to determine under what circumstances the individual employee may obtain judicial review of his breach-of-contract claim despite his failure to secure relief through the contractual remedial procedures."

In the case at bar, three of the plaintiffs submitted affidavits in opposition to defendants' motions for summary judgments, in reference to the action of the defendant local union, through the Plant Chairman, Joe Malotke, when he said, in substance, that if he had been on the side of the Plaintiffs, they would not have lost the Umpire's decision.

Plaintiffs asserted that the defendant local union had breached its duty in acquiescing with the improper action of the employer, GM; that it had prevented the plaintiffs from bringing out all of the facts in reference to the grievance in the hearing before the Umpire; that the union had failed and refused to require the employer, GM, to abide by the Union-Management Agreement; that it acquiesced in the re-classification of Plaintiffs' work and seniority status, reducing them to the EITS status which deprived them of their properly earned seniority rights; that at a special meeting held June 28, 1972, between shop committeemen of the union and representatives of GM, to determine Management's position regarding implementation of Paragraph 59, the minutes show, *inter alia*, the following:

> "In response to Management's query as to whether the above committee's request is to be interpreted as a proposal, the Committee stated it is not making such a proposal to Local Management nor does it intend to make such a proposal."

Plaintiffs' affidavits in opposition to defendants' motions for Summary Judgment clearly demonstrate, we submit, that there was and is a sufficient showing to require a trial on the merits; that the plaintiffs are entitled to redress in the Courts.

Again, from the *Hines* case, *supra*:

> ". . . .it is urged that when the procedures have been followed and a decision favorable to the employer announced, the employer must be protected from relitigation by the express contractual provisions declaring a decision to be final and binding. We disagree. The union's breach of duty relieves the employee of an express or implied requirement that disputes be settled through contractual grievance procedures; if it seriously undermines the integrity of the arbitral process the union's breach also removes the bar of the finality provisions of the contract."

Continuing at page 244:

> "But the judicial remedy in Humphrey v Moore was sought after the adverse decision of the joint arbitration committee. Our conclusion in that case was not that the committee's decision was unreviewable. *On the contrary, we proceeded on the basis that it was reviewable and vulnerable if tainted by breach of duty on the part of the union even though the employer had not conspired with the union."* (emphasis ours)

We respectfully submit that the rulings of the Supreme Court in the *Hines* case, *supra*, from which we have quoted extensively because of the similarity of the questions involved, abundantly reflect and support the claim of the plaintiffs that they are entitled to present their case and to be heard in a trial on the merits.

It is Plaintiffs' position that they had the right to rely upon the provisions of Paragraph 59 of the Union-Management Agreement, *supra*, which guaranteed to them their rights of seniority. Job

security, through seniority, is one of the most important, if not the most important, aspect of labor relations. It is so recognized in the provisions of Paragraph 59, *supra*.

Plaintiffs assert that if defendant local union had fairly and properly represented them, management would have had to abide by the provisions of said agreement; plaintiffs would not have been laid off; they would have continued to work; they would have continued to have their respective seniority earned over the many years of their employment.

OPINION OF 6th CIRCUIT COURT OF APPEALS

The Sixth Circuit Court of Appeals, in its Opinion-Order of February 16, 1979, affirming the District Court's granting of Summary Judgments to defendants, denying plaintiffs their day in Court, made erroneous assertions of alleged facts, completely ignoring the allegations of Plaintiffs' Complaint, their answers to the affirmative defense of Defendant G.M., their opposition to the motions for summary judgments, their exhibits, affidavits in support of their allegations, as if non-existent. For example:

> (1) Court of Appeals: "The International Union, which is not made a party in this case, processed the arbitration."

This is not only flatly denied by Plaintiffs, but the fact is that the International Executive Board of the UAW sustained Plaintiffs' claim to enforce their seniority rights as expressed in the Union-Management Agreement. (Appendix A16, A17)

> (2) Court: "The arbitrator decided in favor of the company. We find no basis for us to interfere with the decision of the arbitrator."

In fact, the Plaintiffs charged collusion between the defendants which made a farce of the so-called arbitration proceeding, and amounted to a fraud upon them, inasmuch as the Union-Management Agreement positively secured their seniority rights. Moreover, this protection was beyond the power of the Arbitrator to change.

> (3) Court: "Plaintiffs complain of the strategy adopted by the International Union at the arbitration hearing***"

The fact is the International Union did not participate in the Arbitration Proceeding; The affidavits of Howard Casey, Edwin Januszkowski, Mitchell J. Foksa, and Donald A. Wisniewski support Plaintiffs' allegations that the Arbitration Hearing was a farce and should never have been had.

> (4) Court: "We find no evidence of fraud or collusion by the unions with the company."

In fact, plaintiffs again reiterate that the International Union was not involved in the Arbitration matter; it had already held for the plaintiffs, and supported their position — that they were entitled to the seniority secured to them by Par. 59 of the Union-Management Agreement, and sought to have the Defendant Local Union comply accordingly. The defendants conspired to defeat this.

> (5) Court: "Relative to the claim by the Plaintiffs that the unions did not fairly represent them in connection with the handling of the grievance, the plaintiffs did not exhaust reasonable internal union remedies which were provided for the UAW Constitution.

Again, the Court made an erroneous conclusion of a material disputed question of fact. The affidavits of Howard Casey and Don Rehahn clearly show that all internal procedures were exhausted; the International Executive Board had decided in Plaintiffs' favor, and sought to have the defendants abide by the terms of the Union-Management agreement. Plaintiffs contend that the Decision of this Court in the *Hines* v *Anchor Motor Freight, Inc. et al.*, also support their claim. (supra)

> (6) Court: "Furthermore, all except six of the plaintiffs approved an agreement between the Local and the Company, which resolved questions with respect to their classification and seniority status***."

This again is an erroneous finding of a material disputed question of fact. The plaintiffs at no time waived their rights to seniority under the Union-Management Agreement. Joseph Malotke, Plant Chairman of defendant Local 160, at a special meeting held May 16, 1974, stated that he had the "document" which they were required to sign; that all of them (plaintiffs) would have to sign; "if one of you don't want to sign, that would not be sufficient; that it would have to be 100%.****** If one of you feel that you don't want to go, then we're not going.**** then we can't make the agreement, because management just isn't going to buy it. It's only going to buy it if it is 100% agreement because they don't want to get back into another Appeal procedure again.***"

It is undisputed that all of the plaintiffs did not sign. Their grievance was not settled. Under the circumstances, plaintiffs had no recourse except to institute their suit in the instant case.

Plaintiffs respectfully submit that all of the details involved in the case at bar can only be determined by a trial on the merits before a Jury. It cannot be resolved on a motion for summary judgment; it should not have been so determined against the plaintiffs as to deprive them of their rights without due process of law.

CONCLUSION

For the reasons hereinabove stated, plaintiffs earnestly submit that a WRIT OF CERTIORARI should issue, particularly in view of this Court's decision in the case of *Hines* v *Anchor Motor Freight, Inc. et al, supra*, and the erroneous assertions of alleged facts on the part of the 6th Circuit U.S. Court of Appeals, supra.

Respectfully submitted,

L. S. Davidow

DAVIDOW & DAVIDOW
2910 Book Tower
Detroit, Michigan 48226

Tel: 313-962-9144

Dated: June 14, 1979

APPENDIX
TABLE OF CONTENTS

	Page
Opinion - Order of U.S. District Court of Michigan, Southern Division (Judge Gubow) Granting Summary Judgment February 13, 1976	A1
Opinion - Order of U.S. District Court of Michigan, Southern Division (Judge Gubow) Denying Motion of Plaintiffs for Rehearing July 29, 1976	A6
Opinion - Order of U.S. 6th Circuit Court of Appeals Affirming lower Court February 16, 1979	A10
Opinion of U.S. 6th Circuit Court of Appeals denying Petition for Rehearing March 19, 1979	A11
Par. 59, Union-Management Agreement re Seniority	A12
Letter from George Toth, Spokesman for Fisher Body Template Makers, Fisher Body Engineering, Local 160 UAW to Mr. Leonard Woodcock, International Union UAW, President re Members (plaintiffs) November 27, 1970	A13
Recommendation of International Executive Board	A16
Decision of International Executive Board UAW re Appeal of George Toth, et al February 1, 1972	A17
Excerpt from Special Meeting of Fisher Body Division of June 28, 1972 (Local 160, UAW)	A19
Affidavit of Howard E. Casey, one of Plaintiffs December 20, 1974	A20
Affidavit of Don Rehahn, one of Plaintiffs December 23, 1974	A22
Affidavits of Mitchell J. Foksa, Donald Wisniewski, and Edwin Januszkowski, May 16, 1974	A25,A26

APPENDIX

MEMORANDUM OPINION

(United States District Court
Eastern District of Michigan
Southern Division)

(Filed February 13, 1976)

(Don Rehahn, et al, Plaintiffs-Appellants vs. General Motors Corporation, et al, Defendants-Appellees)

The court has before it a motion by Defendant, GENERAL MOTORS CORPORATION (GM) for summary judgment, and motions by Defendant, LOCAL 160, UNITED AUTOMOBILE WORKERS, to dismiss or for summary judgment. Pursuant to Rule 12(b) Federal Rules of Civil Procedure, the motion to dismiss shall be treated as a motion for summary judgment under Rule 56 because matters outside the pleadings are presented in connection with the motion.

Plaintiffs are thirty-six individuals who were employed by GM for periods ranging from seventeen to thirty-one years. They claim that GM wrongfully refused to recognize them as journeymen; their lay-off by GM violated the terms of the collective bargaining agreement between the Defendants; the Defendants engaged in fraudulent and collusive actions before the umpire who heard Plaintiffs' grievance; and the decision by the umpire was contrary to the collective bargaining agreement. Originally filed in state Court, GM removed this action pursuant to section 185, Title 29, United States Code.

The motions are based on several contentions. Both the local union and GM argue that (1) Plaintiffs have failed to state a claim for relief under the standard of *Vaca v. Sipes*, 385 U.S. 895 (1967); and (2) Plaintiffs have failed to exhaust their internal union remedies under the UAW's Constitution. GM argues further that the umpire's decision is final, not appealable to this court, and the three-month statute of limitations provided in the United States Arbitration Act, 9 U.S.C. Sec. 12, has run and, therefore, bars Plaintiffs' complaint. The local union contends that, because the international union controls the grievances process, the international union is an indispensable party and has not been joined in this lawsuit, thereby making dismissal proper. Only the initial two arguments made by both Defendants need be considered because it is the court's opinion that those arguments merit summary judgment in Defendant's favor.

The undisputed affidavit of William J. Beckham, the Administrative Assistant to the International Union President, makes clear that the Constitution of the International Union, in articles 32 and 33, provide for appeals by union members of any local union's action. The process includes the filing of an appeal with the International Executive Board (IEB), and an appeal from the decision of the IEB may be taken to the Constitutional Convention Appeals Committee or the Independent Public Review Board. Constitution of the International Union art. 33, Sec. 8 (April, 1970).

In this case, one of the Plaintiffs, George Toth, took an appeal as far as the IEB, but did not appeal further although he was entitled to do so under the union Constitution. None of the other plaintiffs exhausted

their appeals. Therefore, Plaintiffs have failed to exhaust their internal union remedies. This failure to exhaust is fatal to Plaintiffs' cause of action. *Bsharah v. Eltra Corporation*, 394 F.2d 502 (6th Cir. 1968); *Newgent v. Modine Mfg. Co.*, 495 F.2d 919 (7th Cir. 1974); *Watson v. General Motors, Inc.*, Civil Action No. 74-70837 (E.D. Mich. June 28, 1974).

Although an exception to the exhaustion requirement arises when the employee can prove that his union breached its duty of fair representation, *Vaca v. Sipes*, 386 U.S. 171 (1967); *Balowski v. UAW*, 372 F.2d 829 (6th Cir. 1967), the Plaintiffs in this case have failed to set forth a proper claim of unfair representation by their union. *Vaca v. Sipes* held that "(a) breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." 386 U.S. at 190. In order to properly state a claim on this basis, specific facts must be pleaded to support the allegations of the breach. Mere " 'conclusory words . . . without a concomitant showing of lack of good faith' " is insufficient to set forth a claim. *Balowski v. UAW*, 372 F.2d at 835, quoting *Hardcastle v. Western Greyhound Lines*, 303 F.2d 182, 186 (9th Cir.), *cert. denied*, 371 U.S. 920 (1962). The showing that is required must be by the allegations of fact and not the conclusions of facts. *Imbrunnone v. Chrysler Corporation*, 336 F. Supp. 1223, 1225 (E.D. Mich. 1971). While it is certainly true that "(w)hether the bargaining representative has acted fairly, impartially and without hostile discrimination depends upon the facts of each case. . ." *Balowski v. UAW*, 372 F.2d 834, it is also true that absent sufficient allegations of fact to support Plaintiffs' claim, summary judgment is appropriate.

Balowski v. UAW, supra; Imbrunnone v. Chrysler Corporation, supra; Harrington v. Chrysler Corporation, 303 F. Supp 495 (E.D. Mich. 1969). Moreover, because the case is before the court on a motion for summary judgment, we are not limited to the allegations of Plaintiffs' complaint, but must look to the material outside the complaint. *Balowski v. UAW,* 372 F. 2d at 835.

Plaintiffs' complaint, briefs opposing these motions, and affidavits by two of the Plaintiffs fall short of being proof that the union was arbitrary, acted in bad faith, was deceitful or dishonest, or acted in any way that could be considered fraudulent. *See Amalgamated Ass'n of Street, Electric Rwy & Motor Coach Employees of Am. v. Lockridge,* 403 U.S. 274, 299 (1971). Outisde of the Plaintiffs' bald allegations that the Defendants acted collusively or fraudulently, little has been established other than the fact that the Plaintiffs disagree with the ruling of the umpire in arbitration.

Under these circumstances, Plaintiffs' failure to exhaust their internal union remedies cannot be justified because specific facts amounting to substantial evidence of fraud or bad faith on the part of the union have not been shown. It is the opinion of the court that Defendants' motions for summary judgment should be granted.

/s/ Lawrence Gubow
U.S. District Judge

JUDGMENT

(United States District Court
Eastern District of Michigan
Southern Division)

(Don Rehahn, et al, Plaintiffs-Appellants vs. General Motors Corporation, et al, Defendants-Appellees).

At a session of said court held at Detroit, Michigan, this 13th day of February, 1976.

PRESENT: Hon. Lawrence Gubow
U.S. District Judge.

The matter having come before the court on Defendants' motions for summary judgment, and the court having rendered a written opinion on this date,

IT IS ORDERED, for the reasons set forth in said written opinion, that the Defendants' motions for summary judgment be, and the same hereby are, GRANTED.

/s/ Lawrence Gubow
U.S. District Judge

MEMORANDUM OPINION DENYING REHEARING

(United States District Court
Eastern District of Michigan
Southern Division)

(Filed July 29, 1976)

(Don Rehahn, et al, Plaintiffs-Appellants vs. General Motors Corporation, et al, Defendants Appellees).

The Court has before it Plaintiffs' motion for a rehearing of the opinion and order entered February 17, 1976 granting summary judgment against them. This matter was decided, pursuant to an order entered June 10, 1976, on the briefs and relevant pleadings, affidavits, and exhibits submitted by the parties for both this motion and the previous motions.

Plaintiffs argue that this court lacked jurisdiction under 28 U.S.C. Sec. 1441 because the Michigan Supreme Court, in *Loewe v. Hotel Employees*, 389 Mich. 123 (1973), held that state courts have concurrent jurisdiction with federal courts in actions under 29 U.S.C. Sec. 185. From this, Plaintiffs assert that, because jurisdiction in state court was proper, the case was improperly removed to this court on the ground that this court has "original jurisdiction" over the subject matter of the complaint. Section 1441, however, does not bar removal merely because the state and federal courts have concurrent jurisdiction over a particular cause of action and one party files first in state court. Rather, "so long as the facts pleaded disclose a federal claim, the defendant may remove it." *Talbot v. Nat'l Super Markets of La.*, 372 F. Supp. 1050, 1051 (E.D. La. 1974). The Defendants, therefore, properly removed this case from state court and jurisdiction is properly based on 28 U.S.C. Sec. 1441.

Local Rule IX-A provides that "motions for rehearing which merely present the same issues ruled upon by the Court, either expressly or by reasonable implication, will not be granted." The court remains unconvinced by the arguments raised by Plaintiffs in the motion for rehearing and stands on the reasons set forth in its initial memorandum opinion for granting Defendants' motion for summary judgment.

This is especially true with respect to the court's holding that Plaintiffs failed to set forth a claim that the union breached its duty of fair representation. The complaint lacks any factual allegations that could even arguably establish such a cause of action. *See Balowski v. UAW*, 372 F.2d 829, 835 (6th Cir. 1967). Furthermore, Plaintiffs' argue that the Supreme Court's decision in *Hines v. Anchor Motor Freight, Inc.*, 44 U.S.L.W. 4299 (U.S. March 2, 1976), is "on all fours" with this case and entitles it to vacation of this court's initial order. *Hines*, however, held that

> (t)o prevail against either the company or the Union, petitioners must show not only that their discharge was contrary to the contract but must also carry the burden of demonstrating breach of duty by the union. As the District Court indicated, this involves more than demonstrating mere errors in judgment.

44 U.S.L.W. at 4304. In the instant case, it cannot even be said that Plaintiffs have established that the union made "errors in judgment" in processing their claim through the grievance procedure and to arbitration. On the basis of the cases and authorities cited by this court in its initial decision, *Rehahn et al v. General Motors Corp, et al*, Civil Action No. 74-72405 at 4 (February 17, 1976), summary judgment in Defendants' favor was proper on this ground alone.

As to the Court's conclusion that Plaintiffs' failure to exhaust intraunion remedies bars this action, the court notes the recent decision of the Sixth Circuit in *Ruzicka v. General Motors Corp.*, 523 F.2d 306 (6th Cir. 1975). In *Ruzicka*, the court held that the union members' attempts, for 27 months, to exhaust intraunion remedies was sufficient exhaustion to allow them access to federal court. In this case, however, only one of the thirty-six Plaintiffs attempted to seek remedies under the UAW Constitution. The only Plaintiff attempting such relief stopped after the initial step, leaving at least two avenues unexhausted. Unlike the Plaintiff in *Ruzicka*, the Plaintiff in this case who sought intraunion relief was not confronted with a recalcitrant union's total neglect to take required steps toward processing the grievance or submitting it to arbitration, nor was he forced to seek intraunion relief over an inordinately large period of time. In this case, the local union processed the Plaintiff's grievance as far as it could, then turned it over to the international union (not a party to this lawsuit) which brought the matter to arbitration; nowhere was extensive delay encountered in seeking intraunion relief. The court, therefore, rests on its initial opinion that the failure of the plaintiffs to exhaust intraunion remedies is fatal to its claim and properly supports its decision granting summary judgment against Plaintiffs.

For the foregoing reasons, the Plaintiffs' motion for rehearing is denied.

/s/ Lawrence Gubow
U.S. District Judge

Dated: July 29, 1976

ORDER DENYING MOTION FOR RE-HEARING

(United States District Court
Eastern District of Michigan
Southern Division)

(Filed July 29, 1976)

(Don Rehahn, et al, Plaintiffs-Appellants vs General Motors Corporation, et al, Defendants-Appellees).

At a session of said court held at Detroit, Michigan, this 29th day of July, 1976.

PRESENT: Hon. Lawrence Gubow
U.S. District Judge.

This matter having come before the court on Plaintiffs' motion for rehearing and a written memorandum opinion having been rendered on this date,

IT IS ORDERED that, for the reasons stated in the memorandum opinion, Plaintiffs' motion for rehearing be, and hereby, is DENIED.

/s/ Lawrence Gubow
U.S. District Judge

ORDER

(United States Court of Appeals
For the Sixth Circuit)

(Filed February 16, 1979)

(Don Rehahn, et al, Plaintiffs-Appellants vs General Motors Corporation, et al, Defendants-Appellees) No. 77-1163.

Before WEICK, CELEBREZZE and LIVELY
Circuit Judges.

Upon consideration of the briefs, the appendices, and arguments of counsel, we are of the opinion that the District Court did not err in granting the motion for summary judgment. Plaintiffs' grievance against General Motors Corporation (Company) was processed to the third stage by the Local Union. The International Union, which was not made a party to this case, processed the arbitration. The arbitrator decided in favor of the Company. We find no basis for us to interfere with the decision of the arbitrator.

Plaintiffs complain of the strategy adopted by the International Union at the arbitration hearing, which was fully explained and agreed to by the plaintiffs in attendance. We find no evidence of fraud or collusion by the unions with the Company.

Relative to the claim by the plaintiffs that the unions did not fairly represent them in connection with the handling of the grievance, the plaintiffs did not exhaust reasonable internal union remedies which were provided for in the UAW Constitution, and which are binding on them. *Bsharah v. Eltra Corp. and UAW*, 394 F.2d 502 (6th Cir. 1968).

Furthermore, all except six of the plaintiffs approved an agreement between the Local and the Company,

which resolved questions with respect to their classification and seniority status. As a result of that agreement almost all of the employees were recalled to work.

Because of our disposition of this appeal, we need not consider the issue of the Michigan statute of limitations.

The judgment of the District Court is affirmed.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman
Clerk

Issued as Mandate: March 26, 1979
COSTS: NONE

ORDER

(United States Court of Appeals
For the Sixth Circuit)

(Filed March 19, 1979)

(Don Rehahn, et al, Plaintiffs-Appellants vs General Motors Corporation, et al, Defendants-Appellees) No. 77-1163

Before WEICK, CELEBREZZE and LIVELY, Circuit Judges.

Upon consideration of the petition for rehearing, we are of the opinion that the issues on appeal were adequately discussed in our Order affirming the judgment of the District Court, and that the petition for rehearing lacks merit.

It is accordingly ordered that the petition for rehearing be and it is hereby denied.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman, Clerk

ARTICLE 59 OF LABOR-MANAGEMENT AGREEMENT

"SENIORITY"

Seniority shall be by non-interchangeable occupational groups within departments, groups of departments or plant-wise as may be negotiated locally in each plant and reduced to writing. It is mutually recognized by the parties that written local seniority agreements are necessary. All local seniority agreements and modifications or supplements thereto shall be reduced to writing and be subject to the approval of the Corporation and the International Union.

When changes in methods, products or policies would otherwise require the permanent laying off of employees, the seniority of the displaced employes shall become plant-wide and they shall be transferred out of the group in line with their seniority to work they are capable of doing, as comparable to the work they have been doing as may be available at the rate for the job to which they have been transferred."

LETTER FROM GEORGE TOTH, TO LEONARD WOODCOCK REPRESENTING PLAINTIFFS

November 27, 1970

Mr. Leonard Woodcock, President
International Union - UAW
Solidarity House
8000 East Jefferson Avenue
Detroit, Michigan 48214

Dear Brother Woodcock:

We are a group of forty-five (45) U.A.W. Members employed in the Template Department at the Fisher Body Division of the General Motors Technical Center. We are represented by the Fisher Body Engineering Shop Committee, and are one (1) Union of eight (8) that belong to the Amalgamated U.A.W. Local 160.

Under Article #33 of the Constitution of the International Union we are appealing to you the action taken by the Fisher Body Engineering Shop Committee.

The appeal is over the way the Shop Committee is neglecting the provisions of Paragraph #59 of the National Agreement and are in fact insisting that said provisions be violated.

As you know the advancement in new technology has affected many trades in the auto industry, thus affecting many U.A.W. Members.

One of the most affected by Management's changes in *methods* are those U.A.W. Members employed as Template Makers.

Our jobs are rapidly being eliminated. Of the forty-five (45) U.A.W. Members making this appeal, we currently have thirty-three (33) members on lay-off.

The Shop Committee during this current set of negotiations insisted to Management that the provisions of Paragraph 59 should not apply to us. Instead they proposed that not only our laid-off members but the remaining twelve (12) members in the plant be transferred out of the Template Department and be made E.I.T.S in the Metal Worker Engineering Bench and Layout classification, and in so doing deny us the seniority rights we are entitled to.

The ironic part of it is that *all* forty-five (45) members were classified Metal Worker Engineering Bench and Layout at one time and carry a U.A.W. Journeymen's card in that classification. Our seniority ranges from 1948 to 1960 and until we were re-classified in 1965 worked in the very classification the Shop Committee now wants to make us E.I.T.S.' in.

It was Management's position that all Template Makers be transferred under Paragraph 59 and retain *full* seniority with *full* pay to the Metal Workers Engineering Bench and Layout classification.

On Monday, November 23, 1970 George Toth asked his Committeeman, on behalf of the Template Makers, to write a grievance on Paragraph 59 and was refused.

We therefore are appealing to you to protect our basic rights and insure our job protection, because as you can see some of us have twenty-two (22) years invested and don't want to see a life's work thrown out by the Shop Committee.

Furthermore, we are asking you to waive the provisions that one must go thru before an appeal to the International President can be acted upon.

Section 1 of Article 33 states you have the authority upon written application to waive the procedure where unusual circumstances would warrant such waiver.

We feel to take it before a group that influenced the Committee to begin with would cost us precious time, and as out numbered as we are (45 Template Makers vs nearly 400 Metal Workers Engineering Bench and Layout) we fear they would ignore Paragraph 59 of the National Agreement.

We are told that the move will take place within the next two (2) weeks, so time is extremely short.

We currently have over two hundred (200) men laid off at Fisher with over one hundred thirty (130) more being laid off today. Some of these men are in the Metal Worker Engineering Bench and Layout classification, so we question whether we will become E.I.T.S.' or also go to the streets when our current classification is depleted.

It is for the above reasons we ask for a prompt, fair and equitable disposition on our appeal.

Respectfully submitted in behalf of the attached mentioned Template Makers from Fisher Body Engineering,

Fraternally,
/s/ George Toth
George Toth, Spokesman
Fisher Body Template Makers
Fisher Body Engineering
Local 160 U.A.W.

GT:btj
opeiu42

cc: E. Moran, G. Merrelli, W. J. Carr
W. R. Wojciechowski, E. Keith, J. Malotke

Encl:

RECOMMENDATION OF INTERNATIONAL EXECUTIVE BOARD

"RECOMMENDATION

It is the recommendation of our committee to the International Executive Board that the appeal of George Toth, et al, be upheld and that the shop committee of the Fisher Central Engineering unit commence discussions with the local Management to apply the provisions of Paragraph (59) of the November 11, 1970, UAW-GM Agreement to the Template Makers involved herein."

/s/ Pat Greathouse
Vice-President, Chairman,
Appeals Committee

/s/ E. T. Michael
Director, Region 8

DECISION OF THE INTERNATIONAL EXECUTIVE BOARD — UAW

February 1, 1972

Mr. George Toth, et al Members
Local Union 160, UAW
27436 Mound Road
Warren, Michigan 48092

Re: *Appeal of George Toth, et al, Local Union 160*
Appealing from the decision of the Fisher Body unit in denying their rights they state, under Paragraph 59 of the National Agreement, based upon a refusal to write grievances for them and requesting they be transferred to the skilled trades classification of metal worker engineering bench and layout.

Dear Sirs and Brothers:

The above captioned appeal, submitted by you to the International Executive Board in accordance with Article 33, Section 6, of the International Constitution, was submitted to the Nine-Man Committee of the International Executive Board by the Appeals Committee processing your appeal in accordance with Article 33, Sections 7 and 8, and the report and recommendation by the Committee was carefully reviewed by the Nine-Man Committee.

The Nine-Man Committee adopted the recommendation of the Appeals Committee on your appeal and the decision was submitted to all members of the International Executive Board for their review and concurrence.

As a result, the recommendation of the Appeals Committee, adopted by the Nine-Man Committee after review and concurrence by the full International Executive Board, is the decision of the International Executive Board in connection with your appeal submitted April 26, 1971.

Accordingly, the attached recommendation by the Appeals Committee is the decision of the International Executive Board relative to the above captioned appeal.

Fraternally yours,

Leonard Woodcock, President
INTERNATIONAL UNION, UAW

LW:bc
opeiu 42
Enclosure

CERTIFIED MAIL

cc: GM Department
George Merrelli, Director, Region 1
Appeals Committee
William J. Carr, President
Walter Wojciechowski, Recording Sec'y,
Local 160

EXCERPT FROM SPECIAL MEETING OF LOCAL 160, UAW

FISHER BODY DIVISION
GENERAL MOTORS CORPORATION
CENTRAL ENGINEERING
ENGINEERING SHOPS

SPECIAL MEETING
Wednesday, June 28, 1972
(10:00 a.m. to 11:30 a.m.)

* * *

The Committee stated it requested the instant meeting to determine Management's position regarding implementation of Paragraph No. 59 of the National Agreement to the former Template Maker employes. The Committee explained that it had been directed by the International Union (based upon the recommendation of the Appeals Committee and Executive decision) to meet with Local Management and make the following request:

1. Whether Local Management would apply the provisions of Paragraph 59 of the National Agreement to the former Template Makers, and
2. If Paragraph No. 59 provisions of the National Agreement were applied, w..ere would Management assign the former Template Makers, i.e., which classification and/or seniority group.

In response to Management's query as to whether the above Committee's request is to be interpreted as a proposal, the Committee stated it is not making such a proposal to Local Management nor does it intend to make such a proposal.

* * *

AFFIDAVIT OF HOWARD E. CASEY

STATE OF MICHIGAN
COUNTY OF WAYNE—ss.

HOWARD E. CASEY, being duly sworn, deposes and says that he is one of the plaintiffs in the above entitled cause.

Deponent further says he was one of the three of the plaintiffs who appeared at the Umpire's hearing on June 5 and 6, 1973, concerning the grievance of the plaintiffs, having been dealt with unfairly in the attempt to challenge the status of the plaintiffs — "journeymen," and denied them the protection provided for in paragraph 59 of the Union-Management Agreement. Deponent further says that at this hearing, John Bolin was on the Umpire's staff representing the defendant union, and supposedly the plaintiffs. That he was supposed to be trained, by reason of such staff position, in handling the claims of the plaintiffs; that the plaintiffs were unfamiliar with the manner in which umpires' hearings were conducted and, therefore, relied upon Bolin's skill in matters of this sort to properly present their case before the Umpire. That deponent was led to believe that said Bolin was properly presenting their cause before the Umpire. That when deponent was on the stand testifying, he began to tell the situation as it had existed in 1970 when disposition was made by defendant corporation regarding the status of the plaintiffs as journeymen, when one Gardner, counsel for General Motors, objected to deponent's testimony in this regard and told John Bolin that he had better talk to his man and "straighten him out."

Deponent further says that John Bolin had a recess declared, and called this deponent and others of the plaintiffs into the hall and stated that he, Bolin, had made a deal with Gardner not to mention anything about the 1970 negotiations, he, Bolin, claiming that it would weaken our position (the plaintiffs').

Deponent further says that he followed the advice of John Bolin and did not pursue this line of testimony any further. At the time when Bolin advised this deponent to refrain from discussing the 1970 negotiations, he did not realize or appreciate the significance of Bolin's remark that he and General Motors had agreed not to mention anything about the 1970 negotiations.

Subsequently and considering the matter further, deponent expresses his wonderment that Gardner should object to testimony it was claimed would hurt the plaintiffs and strengthen GM's position. He is of the opinion, and asserts as a fact, that this procedure was part of the collusive behavior of the defendants to prevent plaintiffs from having the protection of paragraphs 59, 178, and 220 of the Union-General Motors Agreement then in effect (the agreement between GM and the UAW as of November 11, 1970).

Deponent further says that at the time when he was interrupted, he was attempting to tell the Umpire, among other matters, that on the mantel in his home was a clock presented to him by defendant General Motors, complete with a bronze plaque, honoring him as a master craftsman (journeyman) with 25 years of service with General Motors, and that now he had been reduced to EITS (employee in training) without his

established seniority, in a metal bench and lay-out classification, the very same classification when he made journeyman status — 20 years previously.

And further deponent sayeth not.

/s/ Howard E. Casey

Subscribed and sworn to before
me this 20th day of December 1974

/s/ Lillian S. Stark
Notary Public
Wayne County, Michigan

My Comm. expires: May 24, 1975

AFFIDAVIT OF DON REHAHN

STATE OF MICHIGAN
COUNTY OF WAYNE—ss.

DON REHAHN, being duly sworn, deposes and says that he is one of the plaintiffs in the above entitled cause.

Deponent further says that on November 20, 1970, Joe Malotke and his Shop Committee and the Fisher Body Labor Relations Department negotiated away the seniority of the plaintiffs, which seniority ranged from 18 to 28 years. On that day, the contract was ratified by the "rank and file" who, after being out on the street for ten weeks during the General Motors strike were a bit unruly and wanted to get the voting over and go back to work. Bedlam then ensued, and the plaintiffs were thus not permitted to obtain a fair hearing and could not protest this action which deprived them of their seniority rights.

On the first working day after this ratification, George Toth, one of the plaintiffs, called for the union committeeman, Nick Corniuck, and requested him to file a grievance charging defendant, General Motors, with violation of paragraph 59, paragraph 178 and paragraph 220 of the National Agreement. That Nick refused to write the grievance, whereupon George Toth asked Nick Corniuck to request Joe Malotke to write it; that Joe Malotke refused.

Deponent further says that Joe Malotke and those with him on the Shop Committee resisted successfully plaintiffs' appeal to the International Executive Board concerning their rights under the union agreement. At a meeting regarding plaintiffs' seniority rights at Solidarity House of the IU UAW, Joe Malotke spoke against the plaintiffs, claiming that plaintiffs were not qualified journeymen. In that meeting, Pat Greathouse, a vice president of the International Union, UAW, who chaired this meeting, reminded Joe Malotke of the actions complained of against him and asked Joe Malotke if he were taking the place of Management. It was at this meeting that the position of the plaintiffs was sustained and Joe Malotke was directed to prosecute the claim of the plaintiffs concerning their seniority rights under paragraph 59. That despite this direction, Joe Malotke and defendant Local 160 have not done this, up to and including now.

Leldon Bartlett, one of the plaintiffs who has had much time and experience in the auto industry, including the tool and die apprenticeship, journeyman status in the Metal Bench and Lay Out classification and outside checking experience with defendant, General Motors Corporation, spoke to one of the committeemen of defendant Local 160, one Coy Swearengin and

requested that a grievance be written on his behalf charging violation of paragraph 178 of the union-management agreement, a violation involving his journeyman status. That said Coy Swearengin asked Joe Malotke if he should write the grievance. That Joe Malotke told him to tell Leldon Bartlett that he, Malotke, was not writing any grievance, and in so many words, said that Leldon Bartlett could take it to court. After the International Executive Board had advised Local 160 to proceed on behalf of the plaintiffs under the aforesaid paragraph 59, a meeting was held at Region 1 of the International Union UAW to determine further procedure. Joe Malotke and the Shop Committee of Local 160 were present and stated that the plaintiffs were incompetent as journeymen, Metal Bench and Lay Out Workers. This meeting turned out to be a farce so far as the plaintiffs are concerned. Frank James, who chaired this meeting, (Administrative Assistant to Irving Bluestone, International Union UAW director of General Motors Department) said that he was aware that plaintiffs had journeymen papers issued by defendant General Motors, and was told that this status had been recognized by the UAW-General Motors Agreement of 1948, but went on to say that they were not worth a nickel and that these were merely identification cards.

Deponent further says, as he is informed and believes it to be true, that at a management meeting of defendant General Motors, just prior to the ratification of the 1970 contract, one of the supervisors in the Template Department of defendant General Motors said that General Motors was letting themselves in for a law suit if they agreed with Joe Malotke and his Committee to strip the Template Makers of their seniority and make them EITS in various departments. Charles

Gaudet, personnel director of defendant General Motors and who was chairing the meeting, told the supervisor to shut his mouth. That if Joe Malotke and his Committee wanted "to screw" their own men, let them do it.

Further deponent sayeth not.

/s/ Don Rehan

Subscribed and sworn to before
me this 23rd day of December, 1974.

/s/ Lillian S. Stark, Notary Public
Wayne County, Michigan
My Comm. expires: May 25, 1974.

AFFIDAVIT OF MITCHELL J. FOKSA

I, Mitchell J. Foksa, being first duly sworn, deposes and says as follows:

That, after a meeting of the Template Makers on May 16, 1974, I was told by Plant Chairman Joe Malotke that if he had been on our side, the Template Makers would not have lost the Umpire Decision M-121.

/s/ Mitchell J. Foksa
11-25-74

/s/ Betty J. Ofiara
Notary Public, Macomb County, Mich.
My Commission Expires Oct. 26, 1977

AFFIDAVIT OF DONALD WISNIEWSKI

I, Donald Wisniewski, being first duly sworn, deposes and says as follows:

That after a meeting of the Template Makers on May 16, 1974, I was told by Plant Chairman Joe Malotke that if he had been on our side, the Template Makers would not have lost the Umpire Decision M-121.

/s/ Donald A. Wisniewski

/s/ Frederick M. Fortner
Notary Public, Macomb County, Mich.
Acting in Macomb County, Mich.
My Commission Expires Sept. 9, 1978

AFFIDAVIT OF EDWIN JANUSZKOWSKI

I, Edwin Januszkowski, being first duly sworn, deposes and says as follows:

That, after a meeting of the Template Makers on May 16, 1974, I was told by Plant Chairman Joe Malotke that if he had been on our side, the Template Makers would not have lost the Umpire Decision M-121.

/s/ Edwin Januszkowski

/s/ Edward J. Zelmanski
Notary Public, Wayne County, Michigan
My Commission Expires Nov. 23, 1975

(SEAL)

Supreme Court, U. S.
FILED
JUL 17 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1869

DON REHAHN, et al.,

Petitioners,

—v.—

GENERAL MOTORS CORPORATION and
LOCAL UNION 160, UAW,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT GENERAL MOTORS CORPORATION'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OTIS M. SMITH
General Counsel
General Motors Corporation
3044 West Grand Boulevard
Detroit, Michigan 48202

Attorney for Respondent
General Motors Corporation

Of Counsel:

EUGENE L. HARTWIG
EDMOND J. DILWORTH, JR.
MICHAEL J. CONNOLLY
3044 West Grand Boulevard
Detroit, Michigan 48202

TABLE OF CONTENTS

	PAGE
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statute Involved	2
Counterstatement of the Case	3
ARGUMENT—	
I. Petitioners Have Failed to State a Claim Upon Which Relief Can Be Granted	4
II. The Decision Below Was Correct Because Petitioners Did Not Exhaust Their Reasonable Internal Union Remedies Under the UAW's Constitution	8
CONCLUSION	11
APPENDIX—	
Memorandum Opinion	A1
Judgment	A5
Order (Feb. 6, 1979)	A6
Order (March 19, 1979)	A8
Affidavit of William J. Beckham	A9

Table of Authorities

Cases:

	PAGE
Amalgamated Assoc. of Street, Electric Ry. & Motor Employees of America v. *Lockridge*, 403 U.S. 274, 301 (1971)	8
Balowski v. *UAW*, 372 F.2d 829 (6th Cir. 1967)	8
Bieski v. *Eastern Automobile Forwarding Co.*, 231 F.Supp. 710 (D. Del. 1964), aff'd 354 F.2d 414 (2d Cir. 1965)	5
Bsharah v. *Eltra Corp.*, 394 F.2d 502 (6th Cir. 1968)	9
Dorn v. *Meyers Parking System*, 395 F.Supp. 779 (E.D. Pa. 1975)	8
Ford Motor Co. v. *Huffman*, 345 U.S. 330, 338 (1952)	8
Harrington v. *Chrysler Corp.*, 303 F.Supp. 495 (E.D. Mich. 1969)	9
Hines v. *Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976)	6, 7
Imbrunnone v. *Chrysler Corp.*, 336 F.Supp. 1223 (E.D. Mich. 1971)	9
McCloskey v. *General Motors Corp.*, 88 LRRM 2414 (N.D. Ohio 1974)	9
Republic Steel Corp. v. *Maddox*, 379 U.S. 650 (1965)	5
Ross v. *Molfitt*, 417 U.S. 600, 616-17 (1974)	11
Russom v. *Sears, Roebuck & Co.*, 558 F.2d 439 (8th Cir. 1977), cert denied 98 S.Ct. 481 (1977)	6
Ruzicka v. *General Motors Corp.*, 523 F.2d 306 (6th Cir. 1975)	8

	PAGE
See v. *Automobile Workers Local 417*, 83 LRRM 2512 (6th Cir. 1973), cert denied 414 U.S. 1066 (1973)	10
Selzer v. *Bank of Bermuda Ltd.*, 385 F.Supp. 415, 419 (S.D.N.Y. 1974)	7
Tomera v. *Galt*, 511 F.2d 504 (7th Cir. 1975)	7
Vaca v. *Sipes*, 385 U.S. 895 (1967)	2, 4, 5, 8
United Steelworkers of America v. *American Mfg. Co.*, 363 U.S. 564 (1960)	5, 7, 8
United Steelworkers of America v. *Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960)	5, 7, 8
United Steelworkers of America v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960)	5, 7, 8

Statute:

Labor Management Relations Act of 1947 § 301, 28 U.S.C. § 185 (1970)	2, 3

Rules:

Rule 9(b), Federal Rules of Civil Procedure	7
Rule 19, United States Supreme Court Rules	11, 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No.

DON REHAHN, et al.,

Petitioners,

—v.—

GENERAL MOTORS CORPORATION and
LOCAL UNION 160, UAW,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT GENERAL MOTORS CORPORATION'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, General Motors Corporation ("Employer"), opposes the petition for a writ of certiorari filed herein by Don Rehahn, et al. The petition asks this Court to review the decision of a unanimous panel of the Court of Appeals for the Sixth Circuit affirming the District Court's refusal on Respondent's motion for summary judgment to upset a final and binding labor arbitrator's determination.

The petition presents no compelling issues or important reasons why the writ should be granted. Petitioner is merely requesting this Court to review the record to determine if the District Court abused its discretion by granting Respondent's motion for summary judgment. The

Sixth Circuit has already done so and found no such abuse. The petition should be denied.

Opinions Below

The opinion of the District Court granting summary judgment in favor of Respondents, the order and opinion of the Court of Appeals for the Sixth Circuit affirming the summary judgment and its order and opinion denying Petitioner's petition for rehearing have not been reported. They are printed in the Appendix hereto appended (A1-A13).

Jurisdiction

The jurisdictional requisites for filing a petition for certiorari are adequately set forth in the petition.

Questions Presented

1. Whether Petitioners failed to state a claim for relief under the standard of *Vaca* v. *Sipes,* 385 U.S. 895 (1967) and other Supreme Court precedent.

2. Assuming, *arguendo,* that a claim is stated under *Vaca* v. *Sipes,* must Petitioners exhaust their internal union remedies under the UAW's Constitution?

Statute Involved

Section 301 of the Labor Management Relations Act of 1947, as amended, 28 U.S.C. §185.

Counterstatement of the Case

Essentially, the suit brought by Petitioners, Don Rehahn, et al., challenges actions taken by Respondents General Motors Corporation and Local 160, UAW, in regard to Petitioners' employment at General Motors Corporation's Fisher Body Division.

Petitioners' action was commenced August 28, 1974, in the Circuit Court for the County of Wayne, Michigan. It was removed to the District Court under Section 301 of the Labor Management Relations Act of 1947, as amended, 28 U.S.C. §185.

In their complaint the thirty-six (36) Petitioners alleged that General Motors Corporation ("Employer") and their local union, UAW Local 160 ("Local") acted in concert by not recognizing Petitioners' journeyman status and by denying them employment in violation of the 1970 collective bargaining agreement between the Employer and the International Union, UAW ("International").

The complaint alleged unfair representation on the part of the Local and that the Employer engaged in collusion with the Local to deny Petitioners their jobs and their rights under the collective bargaining agreement.

Both the Local and the Employer moved for summary judgment, supported by affidavits that were not controverted, arguing that the allegations in the complaint did not constitute an adequate claim of unfair representation; that Petitioners' claim was barred by a final and binding arbitration award; and that Petitioners had not exhausted their reasonable internal union remedies.

Following submission of the motions and oral argument by the parties on February 13, 1976, the District Court

granted defendants' motions for summary judgment (A1-A6). The basic grounds relied upon by the District Court were the precise ones advanced by the Local and the Employer (A2, A4, A5).

Subsequently, the District Court on October 28, 1976 issued a final opinion dismissing Petitioners' complaint.

Following the adverse decision by the District Court, Petitioners filed their notice of appeal to the United States Court of Appeals for the Sixth Circuit, wherein the same arguments were raised.

The Court of Appeals affirmed the decision of the District Court and found no abuse of discretion (A7-A8).

Petitioners' petition for a writ of certiorari followed.

ARGUMENT

I.

Petitioners Have Failed to State a Claim Upon Which Relief Can Be Granted

This Court has set out the overriding principles by which the lower courts must be guided in determining whether there has been a breach of a union's duty of fair representation. In *Vaca* v. *Sipes*, 386 U.S. 171 (1967) this Court stated:

> "Other nebula in the nomenclature of the unfair-representation exception are that the Union's conduct toward a member of the collective bargaining unit is *arbitrary, discriminatory*, or in *bad faith*." [Emphasis added]

Id. at 190.

This Court has repeatedly emphasized that peaceful resolution of industrial disputes through arbitration is the preferred mechanism to be employed by unions and employers. *United Steelworkers of America* v. *American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 575 (1960); and *United Steelworkers of America* v. *Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960) ("The Steelworkers Trilogy"). Only when individual union members are able to prove fraud, deceitful action or dishonest conduct by the union and their employer may an award be set aside. *Bieski* v. *Eastern Automobile Forwarding Co.*, 231 F.Supp. 710 (D. Del. 1964), aff'd. 354 F.2d 414 (2d Cir. 1965).

It is only in the rarest of circumstances (i.e. arbitrary, discriminatory or bad faith conduct on the part of employer or union) that courts will upset an arbitrator's award. *Vaca* v. *Sipes, supra.* As Judge Gubow stated in his memorandum opinion below:

> "Mere 'conclusory words . . . without a concomitant showing of lack of good faith' is insufficient to set forth a claim. *Balowski* v. *UAW*, 372 F.2d at 835, quoting *Hardcastle* v. *Western Greyhound Lines*, 303 F.2d 182, 186 (9th Cir.), *cert. denied* 371 U.S. ——."

Indeed, in *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650 (1965), this Court said in pertinent part: "If a grievance procedure cannot be made exclusive, it loses much of its desirability as a method of settlement." *Id.* at 653.

As this Court said in *United Steelworkers of America* v. *American Mfg. Company, supra*, in explaining the role of the courts in relation to binding arbitration:

> "The function of the Court is very limited when the parties have agreed to submit all questions of contract

interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator . . . The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim. The agreement is to submit all grievances to arbitration not merely those which the court would deem meritorious."

• • •

"When the judiciary undertakes to determine the merits of a grievance under the guise of interpreting the grievance procedure of collective bargaining agreements, it usurps a function which under the regime is entrusted to the arbitration tribunal." (*Id.* at 567, 568-569)

No evidence such as would justify upsetting the arbitrator's award herein has been found by either the District Court or the Court of Appeals. Indeed, there is neither allegation nor evidence that the union's action in processing Petitioners' grievance "seriously undermined the integrity of the arbitral process." *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976). While Petitioners allege that the union raised the wrong defense in the arbitration proceeding, mere errors in judgment (assuming there was such an error) are insufficient to support a claimed breach of the duty of fair representation. *Russom* v. *Sears, Roebuck & Co.*, 558 F.2d 439 (8th Cir. 1977), *cert. denied* 98 S.Ct. 481 (1977).[1]

[1] It is well recognized that reviewing courts do not sit to analyze the facts of a given case on appeal. "We do not grant a certiorari to review evidence and discuss specific facts". *United States* v. *Johnston*, 268 U.S. 220, 227 (1925). Nor is this a case where the union was negligent in not investigating all the facts of the case. See also *Lowe* v. *Pate Stevedoring Co.*, 558 F.2d 769, petition for rehearing en banc denied, —— F.2d ——, 97 LRRM 2024 (5th Cir. 1977).

Rule 9(b) of the Federal Rules of Civil Procedure ("FRCP") requires that "in all averments of fraud . . . the circumstances constituting fraud . . . shall be stated with particularity." The purpose of this requirement of Rule 9(b) is at least in part to protect defendants against unsupportable claims which at least implicitly attack their integrity. *See, e.g., Selzer* v. *Bank of Bermuda Ltd.*, 385 F.Supp. 415, 419 (S.D. N.Y. 1974). ("The purpose of Rule 9(b) is . . . [*inter alia*] to protect defendants from the detrimental effect to their reputations that may result from fraud charges that cannot be supported by fact"); *Tomera* v. *Galt*, 511 F.2d 504 (7th Cir. 1975). For failure to comply with Rule 9(b), Petitioners' complaint was properly found to be deficient on its face.

Despite the principles clearly-established in the *Steelworkers Trilogy*, Petitioners herein are asking this Court to set aside the arbitrator's award so that they may relitigate the issues in the arbitration case. Petitioners place total reliance on this Court's decision in *Hines* v. *Anchor Motor Freight, Inc.* This is not, however, a case in which the union refused to press or only perfunctorily pressed Petitioners' claims as in *Hines*. The Petitioners herein were vigorously represented by an International Representative of the Union.[2]

[2] Indeed, the National Labor Relations Board has held that the duty of fair representation does not require that every option be utilized or that a grievance be advocated in a perfect manner, or that the union's efforts on behalf of the employee be optimal. *Teamsters, Local 355 (Monarch Institutional Fords)*, 229 NLRB No. 1232 (1977)).

The Union and the Employer did all that was expected or required of them. A union is given great latitude in handling grievances. *See Balowski* v. *UAW*, 372 F.2d 829 (6th Cir. 1967) relying upon *Ford Motor Co.* v. *Huffman*, 345 U.S. 330, 338 (1952). Here the affidavits submitted by Petitioner purportedly to show inadequate representation hardly bring this case within the very limited exception to the *Steelworkers' Trilogy* doctrine. There is not a scintilla of evidence to support a conclusion that the Union acted in a manner that was *"arbitrary, discriminatory or in bad faith."* *Vaca* v. *Sipes*, 286 U.S. at 190 (emphasis added). It is a well-established principle that for Petitioners to prevail, they must prove by "substantial evidence" union "discrimination that is intentional, severe and unrelated to legitimate union objectives." *Amalgamated Assoc. of Street, Electric Ry. & Motor Employees of America* v. *Lockridge*, 403 U.S. 274, 301 (1971).

The petition for certiorari should be denied for failure of Petitioners to demonstrate any basis upon which to attack the finality of the arbitration award in this case.

II.

The Decision Below Was Correct Because Petitioners Did Not Exhaust Their Reasonable Internal Union Remedies Under the UAW's Constitution

This is not a case wherein the Union refused to process a grievance, *Dorn* v. *Meyers Parking System*, 395 F.Supp. 779 (E.D. Pa. 1975), or where the employees tried for a long period of time to exhaust their administrative remedies within the structure of their union without obtaining relief or a final disposition of their claim, *Ruzicka* v. *General Motors Corp.*, 523 F.2d 306 (6th Cir. 1975). Rather this is a case where the Union vigorously processed the

grievance and the individuals "sat on their rights" by not exhausting their internal union remedies. Moreover, there is no affidavit of any plaintiff that they were unfamiliar with or ignorant of the union's internal procedures. *McCloskey* v. *General Motors Corp.*, 88 LRRM 2414 (N.D. Ohio 1974). Nor was there any reliance upon a union officer's statement that such procedure would be senseless or fruitless.

The Constitution of the International Union, specifically outlines the procedures by which union members may appeal unsatisfactory decisions. The Petitioners here did not resort to these measure and for this additional reason the lower court's decision must be affirmed.

Because Petitioners did not exhaust or even pursue all of their available intraunion appeals, a prerequisite to their action against the employer has not been met. *Harrington* v. *Chrysler Corp.*, 303 F.Supp. 495 (E.D. Mich. 1969) (employee's failure to file in writing and in timely fashion an intraunion appeal of the local's refusal to process his grievance barred his Section 301 suit against both the Union and the Company); *Imbrunnone* v. *Chrysler Corp.*, 336 F.Supp. 1223 (E.D. Mich. 1971) (claim against defendant employer and union dismissed for plaintiff's failure to exhaust his internal union remedies where he had failed to plead a breach of the union's duty of fair representation).

Failure to exhaust these internal remedies has repeatedly been held to be a bar to maintenance of a court action and to be sufficient grounds for granting summary judgment. In *Bsharah* v. *Eltra Corp.*, 394 F.2d 502 (6th Cir. 1968), the plaintiff brought suit against her employer and same International Union involved herein alleging a breach of the duty of fair representation. The Court of Appeals upheld granting summary judgment for the Union.

"In sustaining the union's motion for summary judgment, the court held that, assuming the International Union owed a duty to protect appellant, she failed to allege or show any attempt to initiate her intraunion remedies prescribed by the Constitution and by-laws of the International Union and, in this holding, we concur." (394 F.2d at 503)

Bsharah was reaffirmed in *See* v. *Automobile Workers Local 417*, 83 LRRM 2512 (6th Cir. 1973), cert denied 414 U.S. 1066 (1973). Plaintiff therein alleged that the Union breached its duty by not adequately pressing his right to reinstatement pursuant to an arbitration award. The Court of Appeals upheld dismissal of the action. Specifically, the Court stated:

"Upon consideration of the record, briefs and arguments of counsel, we are of the opinion that plaintiff has not exhausted his intraunion remedies, which he was required to do before maintaining this action." *Bsharah* v. *UAW*, 394 F.2d 502, 68 LRRM 2255 (6th Cir. 1968). (83 LRRM at 2513).[3]

For this reason alone, summary judgment dismissing the cause was appropriate and the petition for certiorari should be denied.

[3] Indeed, Petitioners did not even controvert the affidavit of William J. Beckham, Administrative Assistant to the International Union President, stating that the plaintiffs did not exhaust their intraunion appeals (A10-A13).

CONCLUSION

United States Supreme Court Rule 19, highlights the most compelling reason for denial of this petition for a writ of certiorari. As that rule notes, "review on writ of certiorari is not a matter of right . . . and will be granted only where there are special and important reasons therefor." Such reasons generally exist only when the challenged decision conflicts with a decision of another court of appeals; involves an important question of federal law; or departs from the usual course of judicial proceedings so as to require the Court's supervision.

None of these reasons can be advanced on behalf of the present petition. There is no conflict between the challenged decision and that of any other Circuit Court of Appeals. The only issue raised by the petition is the propriety of the lower court's conclusions that no material issue of fact existed. Clearly, this determination raises no question of federal law. Moreover, the petition fails to demonstrate that the challenged decision departed in any way from the usual course of judicial proceedings. As the preceding discussion clearly indicates, the only issue raised in the petition *i.e.*, the propriety of the lower court's determination that there existed no issue of material fact, was thoroughly briefed and argued before the Court of Appeals. The petition, therefore, is founded solely upon what is alleged to be the lower court's errors reviewing this determination. This contention, even if correct, would not be a sufficient reason to grant the petition. As this Court noted in *Ross* v. *Molfitt*, 417 U.S. 600, 616-17 (1974), "[t]his Court's review . . . is discretionary and depends on numerous factors other than the perceived correctness of the judgment we are asked to review."

The present petition presents none of these "numerous factors". Neither does it set forth any of the "special and important reasons" as outlined in Rule 19. Therefore, the petition is without merit and should be denied.

Respectfully submitted,

OTIS M. SMITH
General Counsel
General Motors Corporation
3044 West Grand Boulevard
Detroit, Michigan 48202

Attorney for Respondent
General Motors Corporation

Of Counsel:
EUGENE L. HARTWIG
EDMOND J. DILWORTH, JR.
MICHAEL J. CONNOLLY
3044 West Grand Boulevard
Detroit, Michigan 48202

APPENDIX

APPENDIX

Memorandum Opinion

(United States District Court
Eastern District of Michigan
Southern Division)

(Filed February 13, 1976)

(Don Rehahn, et al., Plaintiffs-Appellants vs. General Motors Corporation, et al., Defendants-Appellees)

The court has before it a motion by Defendant, GENERAL MOTORS CORPORATION (GM), for summary judgment, and motions by Defendant, LOCAL 160, UNITED AUTOMOBILE WORKERS, to dismiss or for summary judgment. Pursuant to Rule 12(b) Federal Rules of Civil Procedure, the motion to dismiss shall be treated as a motion for summary judgment under Rule 56 because matters outside the pleadings are presented in connection with the motion.

Plaintiffs are thirty-six individuals who were employed by GM for periods ranging from seventeen to thirty-one years. They claim that GM wrongfully refused to recognize them as journeymen; their lay-off by GM violated the terms of the collective bargaining agreement between the Defendants; the Defendants engaged in fraudulent and collusive actions before the umpire who heard Plaintiffs' grievance; and the decision by the umpire was contrary to the collective bargaining agreement. Originally filed in state court, GM removed this action pursuant to section 185, Title 29, United States Code.

The motions are based on several contentions. Both the local union and GM argue that (1) Plaintiffs have failed to state a claim for relief under the standard of *Vaca* v.

Sipes, 385 U.S. 895 (1967); and (2) Plaintiffs have failed to exhaust their internal union remedies under the UAW's Constitution. GM argues further that the umpire's decision is final, not appealable to this court, and the three-month statute of limitations provided in the United States Arbitration Act, 9 U.S.C. §12, has run and, therefore, bars Plaintiffs' complaint. The local union contends that, because the international union controls the grievance process, the international union is an indispensable party and has not been joined in this lawsuit, thereby making dismissal proper. Only the initial two arguments made by both Defendants need be considered because it is the court's opinion that those arguments merit summary judgment in Defendant's favor.

The undisputed affidavit of William J. Beckham, the Administrative Assistant to the International Union President, makes clear that the Constitution of the International Union, in articles 32 and 33, provide for appeals by union members of any local union's action. The process includes the filing of an appeal with the International Executive Board (IEB), and an appeal from the decision of the IEB may be taken to the Constitutional Convention Appeals Committee or the Independent Public Review Board. Constitution of the International Union art. 33, §8 (April, 1970).

In this case, one of the Plaintiffs, GEORGE TOTH, took an appeal as far as the IEB, but did not appeal further although he was entitled to do so under the union Constitution. None of the other Plaintiffs exhausted their appeals. Therefore, Plaintiffs have failed to exhaust their internal union remedies. This failure to exhaust is fatal to Plaintiffs' cause of action. *Bsharah* v. *Eltra Corporation,* 394 F.2d 502 (6th Cir. 1968); *Newgent* v. *Modine Mfg.*

Co., 495 F.2d 919 (7th Cir. 1974); *Watson* v. *General Motors, Inc.,* Civil Action No. 74-70837 (E.D. Mich. June 28, 1974).

Although an exception to the exhaustion requirements arises when the employee can prove that his union breached its duty of fair representation, *Vaca* v. *Sipes,* 386 U.S. 171 (1967); *Balowski* v. *UAW,* 372 F.2d 829 (6th Cir. 1967), the Plaintiffs in this case have failed to set forth a proper claim of unfair representation by their union. *Vaca* v. *Sipes* held that "[a] breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." 386 U.S. at 190. In order to properly state a claim on this basis, specific facts must be pleaded to support the allegation of the breach. Mere "'conclusory words . . . without concomitant showing of lack of good faith'" is insufficient to set forth a claim. *Balowski* v. *UAW,* 372 F.2d at 835, quoting *Hardcastle* v. *Western Greyhound Lines,* 303 F.2d 182, 186 (9th Cir.), *cert. denied,* 371 U.S. 920 (1962). The showing that is required must be by the allegation of facts and not the conclusions of facts. *Imbrunnone* v. *Chrysler Corporation,* 336 F. Supp. 1223, 1225 (E.D. Mich. 1971). While it is certainly true that "[w]hether the bargaining representative has acted fairly, impartially and without hostile discrimination depends upon the facts of each case. . . .," *Balowski* v. *UAW,* 372 F.2d 834, it is also true that absent sufficient allegations of fact to support Plaintiffs' claim, summary judgment is appropriate. *Balowski* v. *UAW, supra; Imbrunnone* v. *Chrysler Corporation, supra; Harrington* v. *Chrysler Corporation,* 303 F. Supp. 495 (E.D. Mich. 1969). Moreover, because the case is before the court on a motion for summary judgment, we are not limited to

the allegations of Plaintiffs' complaint, but must look to the material outside the complaint. *Balowski* v. *UAW*, 372 F.2d at 835.

Plaintiffs' complaint, briefs opposing these motions, and affidavits by two of the Plaintiffs fall short of being proof that the union was arbitrary, acted in bad faith, was deceitful or dishonest, or acted in any way that should be considered fraudulent. *See Amalgamated Ass'n of Street, Electric Rwy & Motor Coach Employees of Am.* v. *Lockridge*, 403 U.S. 274, 299 (1971). Outside of the Plaintiff's bald allegations that the Defendants acted collusively or fraudulently, little has been established other than the fact that the Plaintiffs disagree with the ruling of the umpire in arbitration.

Under these circumstances, Plaintiffs' failure to exhaust their internal union remedies cannot be justified because specific facts amounting to substantial evidence of fraud or bad faith on the part of the union have not been shown. It is the opinion of the court that Defendants' motions for summary judgment should be granted.

/s/ Lawrence Gubow
Lawrence Gubow
U. S. District Judge

Judgment

(United States District Court
Eastern District of Michigan
Southern Division)

(Filed February 13, 1976)

(Don Rehahn, et al, Plaintiffs-Appellants vs. General Motors Corporation, et al, Defendants-Appellees)

At a session of said court held at Detroit, Michigan, this 13th day of February, 1976.

Present:

Hon. Lawrence Gubow
U. S. District.

The matter having come before the court on Defendants' motions for summary judgment, and the court having rendered a written opinion on this date,

It Is Ordered, for the reasons set forth in said written opinion, that the Defendants' motions for summary judgment be, and the same hereby are, Granted.

/s/ Lawrence Gubow
U. S. District Judge

Order

(United States Court of Appeals
for the Sixth Circuit)

(Filed February 6, 1979)

(Don Rehahn, et al, Plaintiffs-Appellants vs. General Motors Corporation, et al, Defendants-Appellees) No. 77-1163.

Before:

WEICK, CELEBREZZE and LIVELY,
Circuit Judges.

Upon consideration of the briefs, the appendices, and arguments of counsel, we are of the opinion that the District Court did not err in granting the motion for summary judgment. Plaintiffs' grievance against General Motors Corporation (Company) was processed to the third stage by the Local Union. The International Union, which was not a party to this case, processed the arbitration. The arbitrator decided in favor of the Company. We find no basis for us to interfere with the decision of the arbitrator.

Plaintiffs complain of the strategy adopted by the International Union at the arbitration hearing, which was fully explained and agreed to by the plaintiffs in attendance. We find no evidence of fraud or collusion by the unions with the Company.

Relative to the claim by the plaintiffs that the unions did not fairly represent them in connection with the handling of the grievance, the plaintiffs did not exhaust reasonable internal union remedies which were provided for in the UAW Constitution, and which are binding on them. *Bsharah* v. *Eltra Corp. and UAW*, 394 F.2d 502 (6th Cir. 1968).

Order

Furthermore, all except six of the plaintiffs approved an agreement between the Local and the Company, which resolved questions with respect to their classification and seniority status. As a result of that agreement almost all of the employes were recalled to work.

Because of our disposition of this appeal, we need not consider the issue of the Michigan statute of limitation.

The judgment of the District Court is affirmed.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman
Clerk

Issued as Mandate: March 26, 1979
COSTS: NONE

Order

(United States Court of Appeals
for the Sixth Circuit)

(Filed March 19, 1979)

(Don Rehahn, et al, Plaintiffs-Appellants v. General Motors Corporation, et al, Defendants-Appellees) No. 77-1163.

Before:

WEICK, CELEBREZZE and LIVELY,
Circuit Judges.

Upon consideration of the petition for rehearing, we are of the opinion that the issues on appeal were adequately discussed in our Order affirming the judgment of the District Court, and that the petition for rehearing lacks merit.

It is accordingly ordered that the petition for rehearing be and it is hereby denied.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman, Clerk

Affidavit of William J. Beckham

(Filed November 1, 1974)

STATE OF MICHIGAN,
COUNTY OF WAYNE, *ss.*:

William J. Beckham, being first duly sworn, deposes and says as follows:

My name is William J. Beckham. I reside in the City of Detroit, County of Wayne, State of Michigan. I am employed by the International Union, UAW at its International Headquarters, Solidarity House, Detroit, Michigan.

Since 1957, I have been an Administrative Assistant to the International Union President. Among my areas of responsibility is the administration of the internal union appeals procedure of the International Union, UAW. Accordingly, I make this affidavit on the basis of my own personal knowledge and upon records under my personal control.

Under Article 32 § 2 of the 1970 and 1972 UAW Constitution, any member may appeal a decision of his local union. Section 2 of Article 32 reads as follows:

> "Any member of any Local Union or unit of an Amalgamated Local Union who wishes to challenge any action, decision or penalty of that body or of any official or representative of that body must, in all cases and procedures where no other time limit is specifically set forth by this Constitution, initiate the challenge before the appropriate body of such Local Union or unit within sixty (60) days of the time the challenger first becomes aware or reasonably should have become aware of the alleged action, decision, or penalty of that body."

Further, the International Constitution, Article 32 § 5 allows for a member to appeal to the International Executive Board (IEB).

> Any member feeling himself aggrieved by any action, decision or penalty of his subordinate body shall be entitled to appeal that action, decision or penalty to the International Executive Board only when it has been passed upon by the Local Union membership or delegate body, as the case may be; except where direct appeal to the International Executive Board from some action, decision or penalty of a body other than the Local Union membership or delegate body shall be specifically permitted by another Article of this Constitution.

Also, under Article 32, an aggrieved member may appeal from IEB decisions to the Independent Public Review Board or to the Constitutional Convention Appeals committee.

UAW Local 160 member George Toth appealed to the International Union Executive Board from actions of UAW Local 160, Fisher Body Engineering Unit in regard to the Template makers. Attached are copies of the following documents from files under my control in regard to Brother Toth's appeal on behalf of himself and the other Template makers at Fisher Body Engineering Unit: 1) Letter of November 27, 1970 from Brother Toth to President; 2) Letter of April 20, 1971 from Brother Toth to President Woodcock; 3) July 21, 1971 letter from President Woodcock to Brother Toth and other Template makers; 4) Decision of the IEB Appeals Committee in regard to the Template makers appeal and; 5) February 1, 1972 letter from President Woodcock to Brother Toth.

I have examined the files of the International Union after the letter of President Woodcock of February 1, 1972. My files reveal that no party took any further appeal or action from the decision of the International Executive Board in regard to the above appeal.

I have examined the Complaint in the above matter brought by a number of Template makers against UAW Local 160 and General Motors Corporation. Except for the above described appeal of Brother Toth, which dealt with all of the Local 160 Fisher Engineering Unit Template Makers, my files reveal no appeal to the International Executive Board or to the Independent Public Review Board by any of the plaintiffs in the above matter complaining of actions or decisions by UAW Local 160 or by the International Union.

I am authorized to make this affidavit in the above case. I further swear that I would be competent to testify to the above matters in a court of law.

Further, affiant sayeth not.

Subscribed and sworn to before me
a Notary Public, in and for the
County of Wayne, State of Michigan,
this ..... day of October, 1974.

.....
Elizabeth Pilot, Notary Public
My commission expires:
October 16, 1976

Supreme Court, U. S.
FILED
AUG 8 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1869

DON REHAHN, et al.,
Petitioners,
v.
GENERAL MOTORS CORPORATION and
LOCAL UNION 160, UAW,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

BRIEF FOR UAW LOCAL 160 IN OPPOSITION

John A. Fillion
General Counsel
Jordan Rossen
M. Jay Whitman
Leonard R. Page
Associate General Counsel
INTERNATIONAL UNION, UAW
8000 East Jefferson Avenue
Detroit, Michigan 48214

Bruce A. Miller
Duane F. Ice
MILLER, COHEN, MARTENS
& SUGERMAN, P.C.
2460 First National Building
Detroit, Michigan 48226

Counsel for UAW Local 160

Interstate Brief & Record Co., Wurlitzer Bldg., 1509 Broadway, Detroit, MI 48226
962-8745 962-8746

TABLE OF CONTENTS

	Page
INDEX OF AUTHORITIES	ii
OPINIONS BELOW	1
JURISDICTION	2
QUESTION PRESENTED	2
STATUTE INVOLVED	3
COUNTERSTATEMENT OF THE CASE	3
Background and Journeyman Status Grievance	3
1970 Negotiations And EITS Status	5
Internal Union Appeal	6
Arbitration	7
1973 Negotiations And Settlement	9
The Decisions Below	9
ARGUMENT	10
I. THE DECISION BELOW IS CORRECT. FURTHER REVIEW IS NOT WARRANTED.	12
A. The Arbitration Is Binding And Bars This Action	12
B. The Failure To Exhaust Internal Union Remedies Bars This Action	16
C. Summary Judgment Was Proper	18
D. The Statute Of Limitations Bars This Action	20
E. The Grievance Settlement Bars This Action	22

Page

II. THIS CASE IS NOT WORTHY OF REVIEW ON CERTIORARI 23

CONCLUSION 25

APPENDIX A A1

APPENDIX B A9

INDEX OF AUTHORITIES

Cases:

Anson v. Hiram Walker & Sons, 222 F.2d 100 (7th Cir. 1955), *cert. denied*, 350 U.S. 840 (1955) 17

Brady v. Transworld Airlines, Inc., 401 F.2d 87 (3rd Cir. 1968), *cert. denied*, 393 U.S. 1048 (1969) 17

Bsharah v. Eltra Corp. and UAW, 394 F.2d 502 (6th Cir. 1968) 17

Edsberg v. Operating Engineers Local 12, 300 F.2d 785 (9th Cir. 1962) 17

Field v. UAW Local 652, 6 Mich. App. 140 (1967) 20

Ford Motor Co. v. Huffman, 345 U.S. 330 (1953) . 14

Gainey v. Bhd. of Ry. & Steamship Clerks, 275 F.2d 342 (3rd Cir. 1960), *cert. denied*, 363 U.S. 811 (1960) 17

Glover v. St. Louis-San Francisco Ry. Co., 393 U.S. 324 (1969) 17

Glowacki v. Motor Wheel Corp., 67 Mich. App. 448 (1976) 20

Page

Hines v. Anchor Motor Freight, Inc., 424 U.S. 554 (1976) 13,15,16,23,24

Humphrey v. Moore, 375 U.S. 335 (1964) 14,15

Imel v. Zohn Mfg. Co., 481 F.2d 181 (10th Cir. 1973), *cert. denied*, 415 U.S. 915 (1974) 17

International Union v. Hoosier Cardinal Corp., 383 U.S. 696 (1966) 20

Jenkins v. McKeithen, 395 U.S. 411 (1969) 19

Kennedy v. Local 38, Brewery Workers, 3 Mich. App. 700 (1966) 20

Mine Workers v. Coronado Coal Co., 259 U.S. 344 (1922) 21

Motor Coach Employees v. Lockridge, 403 U.S. 274 (1971) 14

Newgent v. Modine Mfg. Co. and UAW, 495 F.2d 919 (7th Cir. 1974) 17

Parks v. IBEW, 314 F.2d 886 (4th Cir. 1963), *cert. denied*, 372 U.S. 976 (1963) 17

Pesola v. Inland Tool and Mfg. Co., 423 F. Supp. 30 (E.D. Mich. 1976) 21

Poller v. Columbia Broadcasting System, 368 U.S. 464 (1962) 19

Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965) 13

Smart v. Ellis Trucking Co., 409 F. Supp. 129 (E.D. Mich. 1976) 21

Snowden v. Hughes, 321 U.S. 1 (1943) 19

SS Monrosa v. Carbon Black Export, 359 U.S. 180 (1959) 24

Page

Steele v. Louisville & Nashville Ry. Co., 323 U.S. 192 (1944) 14

Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960) 12,13

Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960) 13

Steelworkers v. Warrior and Gulf Navigation Co., 363 U.S. 574 (1960) 12

United States v. Johnston, 268 U.S. 220 (1925) ... 5

Vaca v. Sipes, 386 U.S. 171 (1967) 14,22

Washington v. Chrysler Corp., 68 Mich. App. 374 (1976) 20

Williams v. Dana Corp., 54 F.R.D. 473 (E.D. Mich. 1971) 21

Statutes:

National Labor Relations Act, 29 U.S.C. §151 *et seq.* 14

Labor Management Relations Act

§203(d), 29 U.S.C. §173(d) 12

§301, 29 U.S.C. §185 3,20

Michigan Revised Judicature Act §5805(7), Mich. Comp. Laws, §600.5805(7) 20

Rules:

Fed. R. Civ. P. 12(b) 18

Fed. R. Civ. P. 56(e) 18

Supreme Court Rule 23.4 23

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1869

DON REHAHN, et al.,
Petitioners,
v.
GENERAL MOTORS CORPORATION and LOCAL UNION 160, UAW,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR UAW LOCAL 160 IN OPPOSITION

OPINIONS BELOW

None of the opinions and orders below are officially reported. They are appended to the Petition. (Pet. App. 1-11)

JURISDICTION

The Court of Appeals denied plaintiffs' petition for rehearing on March 19, 1979. Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether, in the circumstances of this action alleging breach of collective bargaining agreement by the employer and unfair representation by the union, summary judgment was properly granted for the defendants because (1) the claims of the plaintiffs-employees were the subject of final and binding arbitration, (2) plaintiffs failed to exhaust internal union remedies with respect to claims they now raise, (3) plaintiffs failed to demonstrate a genuine issue of material fact as to whether the union acted arbitrarily, discriminatorily or in bad faith, (4) the actions of the local union occurred outside Michigan's three-year statute of limitations period and the international union which handled the arbitration was not joined as a defendant and (5) all but six of the plaintiffs signed a settlement agreement returning them to work and resolving questions concerning their seniority status.

STATUTE INVOLVED

Labor Management Relations Act §301(a), 29 U.S.C. §185(a) (1970):

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

COUNTERSTATEMENT OF THE CASE[1]

Background and Journeyman Status Grievance

All of the Petitioners worked for many years as Template Makers at GM's Fisher Engineering Facility. This classification, as of 1948, was one of five in the combined skilled group classification "Metal Worker-Engineering-Bench and Layout" (MBLO). (Loc. App. 35-36)

---

[1] Petitioners' statement of the case contains considerable argument but omits key facts, including all dates of events. Dates are important in light of the statute of limitations defense posited in this case at the outset. Also, Petitioners include few references to the record or appendices below. For the sake of clarity, the joint appendix below will be referred to as "Jt. App." and UAW Local 160's appendix below as "Loc. App." The appendices filed here by Petitioners and General Motors Corporation ("GM" herein) will be denoted "Pet. App." and "GM App.," respectively.

As part of the local contract settlement in March, 1965, Template Makers were given the title "Metal Worker-Template Maker," a non-MBLO classification. New skilled duties were added to the remaining MBLO classifications. (Jt. App. 22; Loc. App. 36)

From 1965 to 1970, the demand for templates decreased, due to GM's greater use of automated numerical control equipment, to the point that many Template Makers were laid off (Jt. App. 225). In the spring of 1970, the Template Makers filed a grievance demanding that they be recognized as part of the MBLO group and "journeymen" as defined by paragraph 178 of the 1967 GM-UAW National Agreement.[2] (Jt. App. 209, 227) Presumably, the Template Makers would then be able to transfer into the MBLO classifications and "bump" employees with less seniority.

The National Agreement specified which steps of the grievance procedure were controlled by Petitioners' local union, Local 160 of the United Automobile, Aerospace and Agricultural Implement Workers of

---

[2] Paragraph 178 provided:

The term "journeyman" when used in this Argeement means an employe who: (a) has satisfactorily completed an apprentice training course; or, (b) one who has properly carried such journeyman status in any General Motors plant under the terms of previous agreements between the parties; or, (c) one who has been reclassified as a journeyman under the terms of the Skilled Trades Section of this Agreement; or (d) one newly hired, who meets one of the above alternative requirements or can prove that he has worked in the trade at least equivalent to that on-the-job experience required for reclassification to journeyman status of those employes-in-training covered in Paragraph (167) of this agreement. (Jt. App. 209a; Loc. App. 16, 18)

America (UAW), and which steps were the responsibility of the International Union, UAW. Local 160 processed Petitioners' grievance through all the steps in its control — steps 1 through 3. In June, 1970, the International Union took control of the grievance. It was thereafter responsible for all strategy decisions and prosecuting the grievance, up to and including arbitration if it decided to take the matter that far. Local unions do not control arbitrations under national contracts. Local 160 merely assisted International Representatives in their investigation, preparation and presentation of the grievance.[3] (Loc. App. 2, 9-10, 53-65; Jt. App. 202, 211)

1970 Negotiations And EITS Status

While the grievance was pending, the 1970 local negotiations commenced. Local 160's negotiating team sought some protection for the Template Makers in the form of partial or temporary MBLO status. This was accomplished by designating them "Employees-In-Training with Seniority" (EITS). The local

---

[3] Petitioners inexplicably sued only Local 160 and failed to join the International Union as a party. This failure was asserted as a ground for dismissal of the complaint. (Pet. App. 2) Now, Petitioners seek to compensate for this oversight by disingeniously alleging that the International Representative who eventually handled the arbitration was really a local union representative and the International Union did not participate in the arbitration. Petition, pp. 9, 27. Besides being incorrect as a matter of fact and law, Petitioners' assertion, as shown *infra*, is not central to the Court's present inquiry. If anything, the factual uncertainty Petitioners now seek to create mitigates against granting certiorari; the Court would be required to review the evidence and determine this factual matter for itself where the lower courts had no trouble in finding that the International Union handled the arbitration. See *United States v. Johnston*, 268 U.S. 220, 227 (1925).

contract with the EITS provision was ratified in November, 1970. As a result, forty of the forty-four laid off Template Makers were recalled to work and given the wage increase accompanying MBLO status. (Jt. App. 225-226)

Internal Union Appeal

In November, 1970 and April, 1971, Petitioner George Toth wrote to the UAW International Executive Board (IEB) complaining about the refusal of Local 160's bargaining committee and membership to sanction a new grievance. Despite the ratification of the 1970 local contract, Toth wanted to file a grievance asserting that Template Makers held journeyman status for the purpose of transferring into the MBLO group and that they were denied transfer rights under paragraph 59 of the National Agreement.[4] (Jt. App. 183-187)

---

[4] Paragraph 59 stated:

Seniority shall be by non-interchangeable occupational groups within departments, groups of departments or plant-wide, as may be negotiated locally in each plant and reduced to writing. It is mutually recognized by the parties that written local seniority agreements are necessary. All local seniority agreements and modifications or supplements thereto shall be reduced to writing and be subject to the approval of the Corporation and the International Union.

When changes in methods, products or policies would otherwise require the permanent laying off of employes, the seniority of the displaced employes shall become plant-wide and they shall be transferred out of the group in line with their seniority to work they are capable of doing, as comparable to the work they have been doing as may be available, at the rate for the job to which they have been transferred. (Loc. App. 15-16)

The IEB concluded that paragraph 59 did apply to the Template Makers and that they ought to be given the transfer rights guaranteed therein. It recommended that Local 160 negotiate with GM to apply that paragraph, but it did not address the issue of whether each Template Maker was qualified as a journeyman under paragraph 178 and could therefore transfer into the MBLO group. Presumably, which jobs the Template Makers were capable of doing would be determined in the negotiations. (Jt. App. 193, 198)

Arbitration

Pursuant to the IEB decision, Local 160 began negotiations with GM. But, it could not exact a compromise. Representatives of the International Union undertook to assist Local 160. They decided that the best way to resolve the matter was to arbitrate the still pending grievance concerning journeyman status. (Jt. App. 226-228; Loc. App. 53)

John Bolin, an International Representative, was assigned to prepare the International's case. He met with all the Template Makers on June 3, 1973, and reviewed the brief he intended to submit. He also reviewed a key strategy decision: not to mention the EITS provision of the 1970 local contract. His reasoning was twofold. The words "in training" in that title might imply that the Template Makers were not already competent to work as journeymen. And, any reclassification won for the Template Makers in the 1970 local negotiations would not shed light on their status under the governing contract, the 1967 National

Agreement. The grievants agreed with this strategy.[5] (Jt. App. 203, 206, 230, 231; Loc. App. 3)

Three days later, the hearing was held before the Impartial Umpire. One of the grievants began to testify about the EITS status. Bolin obtained a recess and reminded him of the strategy. The witness appeared to agree and thereafter testified accordingly. After the hearing, none of the Template Makers expressed dissatisfaction. In fact, several congratulated Bolin. (Jt. App. 206, 232)

On October 30, 1973, the Impartial Umpire determined that paragraph 178 did *not* apply to the Template Makers and they were not entitled to journeyman status or, of course, to transfer into journeymen positions under paragraph 59. (Jt. App. 21 *et seq.*)

Shortly thereafter, GM unilaterally reclassified the Template Makers as "Employees in Training" (EIT), dropping the one year seniority which had accompanied the former designation. Then, it laid off the Template Makers. Local 160 filed a grievance protesting these actions. (Jt. App. 214, 232, 233)

---

[5] Petitioners now second-guess Bolin's judgment, asserting expansively that they were persuaded to follow his advice "which worked a fraud on the plaintiffs" and they were not allowed to "bring out all the facts." Petition, pp. 18, 24. But, their prior concurrence in the strategy is *uncontradicted*. It is clear that, for sound reasons, the *only* thing Bolin thought should not be mentioned was the 1970 negotiations resulting in EITS status. The Sixth Circuit noted that the strategy "was fully explained and agreed to by the plaintiffs in attendance." (Pet. App. 10)

1973 Negotiations And Settlement

By this time, the 1973 local negotiations were under way. Several of the Template Makers approached Local 160's Unit Chairman and asked whether the 1970 EITS provision might be incorporated into the 1973 agreement. The Local bargained for this and was successful in securing reinstatement of the EITS status. GM agreed that this would constitute settlement of the pending layoff grievance if the Template Makers would individually sign the agreement. In the summer of 1974, all but six of the Template Makers signelod the agreement and it was ratified by the entire Local membership. All but five of the Template Makers thereafter returned to work. (Jt. App. 215-217, 221, 234)

The Decisions Below

On August 28, 1974, Petitioners sued in the Circuit Court for the County of Wayne, Michigan, complaining that GM refused to recognize their journeyman status and that Local 160 colluded with GM and turned the Umpire hearing into a fraud and a "farce." (Jt. App. 4-12) The action was removed to the District Court which granted summary judgment to the defendants because plaintiffs failed to exhaust their internal union remedies with respect to the complaints about the umpire hearing and because the "bald allegations" of plaintiffs' complaint, briefs and affidavits failed to create a genuine issue of fact as to whether Local 160 acted arbitrarily, discriminatorily, fraudulently or in bad faith. The Court of Appeals affirmed.[6] (Pet. App. 1-11)

---

[6] Neither of the lower courts felt it necessary to reach and pass upon the statute of limitations defense asserted by Local 160.

ARGUMENT

The decisions of the lower courts were manifestly correct. There are several independently sufficient grounds for dismissal of the complaint.

The arbitration award bars Petitioners' claims. Petitioners might be able to avoid the binding effect of the award if they could articulate a cogent claim that Local 160 breached its duty of fair representation, but they have not done so. And, the uncontradicted facts establish that they cannot adequately plead such a claim.

Petitioners' failure to even attempt to utilize their internal union remedies with respect to the claim that the arbitration was a "fraud" and a "farce" bars them from presenting such a claim now. This is especially true because the remedies here are demonstrably not futile, inasmuch as they afforded Petitioners relief in an instance *prior* to the arbitration.

Petitioners failed to create a genuine issue of material fact as to the foregoing grounds adopted by the lower courts. Petitioners relied, and still do, on the mere allegations and denials of their pleadings. They also relied on conclusions, opinions and epithets. Summary judgment was therefore proper.

An alternative ground for dismissal, advanced but not reached in the lower courts, is that the action against Local 160 is barred by the applicable statute of limitations. Local 160's control over Petitioners' grievance ended more than three years prior to the filing of this action. The arbitration occurred within

the limitations period, but it was handled by a representative of the International Union, UAW.[7] For reasons known only to Petitioners, the International Union was not joined as a defendant.

Lastly, as Petitioners admit (Petition 10, 28), a large number of them signed a settlement agreement restoring their EITS status and returning them to work, provided they waive grievances and claims about their seniority status *vis-a-vis* journeymen. All but five of the Template Makers returned to work.

Apart from the palpable correctness of the result below, this case does not warrant the grant of *certiorari*. Petitioners have failed to present their case with accuracy, brevity and clearness, and that alone is sufficient reason to deny the petition.

Petitioners have attempted to argue their case only. There is no effort to demonstrate the public importance, recurring nature or larger impact of whatever issues they are trying to advance. This case, in its facts, parties, posture and multitude of defenses, is unique. Because of the many defects in Petitioners' lawsuit, it is doubtful that the issue they perceive to be central would be reached.

---

[7] The affidavit submitted below of the International Representative, John Bolin, is appended to this brief as Appendix A. Bolin's description of the grievance and arbitration procedure, his employer, his duties and the arbitration of Petitioners' grievance, including the key strategy decisions, is not contradicted by Petitioners' affidavits. (Pet. App. 20-26)

Contrary to Petitioners' assertion, the holding below does not conflict with the decisions of this Court; it squares with them precisely. Nor did the proceedings depart from the accepted and usual course. The rule on summary judgment was designed for cases like this. There is no conflict among the courts of appeal, and there is no important question of federal law which has not been, but should be, settled by this Court.

The petition for writ of *certiorari* should therefore be denied.

I.

THE DECISION BELOW IS CORRECT. FURTHER REVIEW IS NOT WARRANTED.

A. The Arbitration Is Binding and Bars This Action.

Congress has stated that "[f]inal adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement." Labor Management Relations Act §203(d), 29 U.S.C. §173(d). The national labor policy favors collective bargaining as a means of maintaining industrial peace, and this Court has recognized that the grievance and arbitration machinery is at the heart of this system of industrial self-government. *Steelworkers v. Warrior and Gulf Navigation Co.*, 363 U.S. 574, 578 (1960). These policies "can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play." *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 566 (1960). Courts should therefore not usurp the functions

of arbitrators, *id.* at 569, because plenary review by the courts would render meaningless the concept of finality of arbitration, "for it would in reality almost never be final." *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 598 (1960). If the grievance procedure is not binding and exclusive, it loses its effectiveness and desirability as a method of settlement, and a rule creating an exception to the grievance procedure is a disruptive influence upon both the negotiation of the agreement and its administration. *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 653 (1965).

In balancing these principles and the rights of individual employees, the Court held in *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976), that an employee is bound by an arbitration under a collective bargaining agreement, unless he can bring himself within a narrow exception: Where a union's breach of the duty of fair representation *"seriously undermines* the integrity of the arbitral process," or that process has *"fundamentally malfunctioned* by reason of the bad faith performance of the union" or the "contractual processes have been *seriously flawed* by the union's breach of the duty," an arbitration award is no bar to an employee's suit against his union *and* employer. *Id.* at 567, 569, 570 (emphasis supplied). Establishing that a case falls within this exception "involves more than demonstrating mere errors in judgment" by the union. *Id.* at 571. In *Hines*, evidence which would have established a discharged employee's innocence was not submitted to the arbitrator. It was alleged that with a minimum of investigative effort, the union could have discovered the exculpatory evidence, but it failed to do so. The Court reversed the affirmance of summary judgment for the employer which had relied on the finality of the arbitration. *Id.* at 560-561.

Petitioners attempt to bring themselves within the *Hines* exception. Their complaint about the arbitration comes down to an *ex post facto* disagreement with the strategy of the International Representative concerning testimony. Petition, 8-9, 18. However, a "wide range of reasonableness must be allowed a statutory representative in serving the unit it represents . . . ." *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953). This discretion is "subject always to complete good faith and honesty of purpose." *Id.* at 338. A union's broad authority in negotiating and administering collective bargaining agreements is "undoubted," but a breach of the duty of fair representation occurs where there is "substantial evidence of fraud, deceitful action or dishonest conduct." *Humphrey v. Moore*, 375 U.S. 335, 338 (1964). Further, a union cannot engage in "discrimination that is intentional, severe; and unrelated to legitimate union objectives," *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 301 (1971), or "arbitrarily ignore a meritorious grievance or process it in a perfunctory fashion." *Vaca v. Sipes*, 386 U.S. 171, 191 (1967). In sum, a "breach of the duty of fair representation occurs *only* when the union's conduct toward a member of the bargaining unit is arbitrary, discriminatory or in bad faith." *Id.* at 190 (emphasis supplied).[8]

---

[8] The duty of fair representation is implicit in the National Labor Relations Act, 29 U.S.C. §151 *et seq.*, because it affords unions exclusive power to represent all employees of a bargaining unit. Concomitant with that power is the duty to serve fairly the interests of all in the unit. *See Steele v. Louisville & Nashville Ry. Co.*, 323 U.S. 192 (1944); *Vaca*, 386 U.S. at 177.

This case is like *Humphrey v. Moore, supra*. There, less senior employees were laid off. Their grievances were taken to arbitration and the decision was adverse. They sued their union alleging that its representation before the arbitration board was fraudulent, dishonest and in bad faith. This Court reversed the judgment of the state court, finding that there was no breach of the duty of fair representation and that the arbitration decision was "final and binding" despite plaintiffs' conclusory allegations. 375 U.S. at 351.

Here, Petitioners are bound by the arbitration award because, in the words of the District Court, their "complaint, briefs opposing these motions [for summary judgment], and affidavits by two of the Plaintiffs fall short of being proof that the union was arbitrary, acted in bad faith, was deceitful or dishonest, or acted in any way that could be considered fraudulent . . . . Outside of the Plaintiffs' bald allegations that the Defendants acted collusively or fraudulently, little has been established other than the fact that the Plaintiffs disagree with the ruling of the umpire in arbitration." (Pet. App. 4)

Even now, Petitioners rely on the same bald allegations. The petition is singularly uninformative. It is sprinkled with chants of "fraud," "collusion," "farce," "illegal," *etc.* Petition, 8, 9, 17, 18, 20, 27. These incantations do not disclose *facts* which, if proved, would demonstrate the kind of dereliction of duty alleged in *Hines*. Referring to their prior concurrence in Bolin's suggestion not to mention the EITS status, Petitioners lamely allege that they "were persuaded to follow the advice of the local union

representative which worked a fraud upon Plaintiffs." Petition, 18. This kind of difference of opinion in strategy, coming as it does "[s]ubsequently and considering the matter further," in the words of Petitioner Casey's affidavit (Pet. App. 21), is patently unlike *Hines*. Moreover, even if in retrospect Bolin's judgment was in error (but it was not), Petitioners have no claim. 424 U.S. at 571.[9]

Petitioners' reliance on *Hines* is misplaced, and the arbitration bars this action.

B. The Failure To Exhaust Internal Union Remedies Bars This Action.

Over three years *prior* to the arbitration complained of, an internal complaint was filed and the IEB granted relief. It ordered that Local 160 attempt to negotiate transfers for the Template Makers. But, it is uncontradicted that Petitioners never raised internally the complaint they now assert — that the arbitration was a fraud. (Affidavit of William J. Beckham, GM App. 9-11).

Petitioners allege no conflict among the circuits on the requirement that members exhaust their internal union remedies before suing their unions for breach of the duty of fair representation. Indeed, there is no such

---

[9] Petitioners also rely on dark inferences they would have the Court draw from an alleged statement by a Local 160 representative to the effect that if he had agreed with their position, the arbitration would have been won. Petition, 24. This after-the-fact braggadocio does not amount to proof that Bolin failed to fairly represent the Template Makers in the arbitration or that he committed fraud or colluded with GM. It merely serves to reinforce the fact that the Local did not control the arbitration.

conflict. *E.g., Newgent v. Modine Mfg. Co. and UAW*, 495 F.2d 919 (7th Cir. 1974); *Imel v. Zohn Mfg. Co.*, 481 F.2d 181 (10th Cir. 1973), *cert. denied*, 415 U.S. 915 (1974); *Bsharah v. Eltra Corp. and UAW*, 394 F.2d 502 (6th Cir. 1968); *Brady v. Transworld Airlines, Inc.*, 401 F.2d 87 (3rd Cir. 1968), *cert. denied*, 393 U.S. 1048 (1969); *Edsberg v. Operating Engineers Local 12*, 300 F.2d 785 (9th Cir. 1962); *Parks v. IBEW*, 314 F.2d 886 (4th Cir. 1963), *cert. denied*, 372 U.S. 976 (1963); *Gainey v. Bhd. of Ry. & Steamship Clerks*, 275 F.2d 342 (3rd Cir. 1960), *cert. denied*, 363 U.S. 811 (1960); *Anson v. Hiram Walker & Sons*, 222 F.2d 100 (7th Cir. 1955), *cert. denied*, 350 U.S. 840 (1955).

Specifically, the UAW internal remedies are wholly adequate and have been lauded as such. *See, e.g., Newgent; Parks*, both *supra*. A UAW member feeling aggrieved by some action of a local or international officer may appeal to the International Executive Board. If still dissatisfied, he may appeal to the independent Public Review Board or to the UAW Constitutional Convention Appeals Committee. (GM App. 9, 10).

This is not a case like *Glover v. St. Louis-San Francisco Ry. Co.*, 393 U.S. 324 (1969), where it was credibly alleged that exhaustion of internal union remedies would be futile. In *Glover*, the Court acknowledged and affirmed the exhaustion requirement but held that the futility exception applied there. *Id.* at 329, 330. Here, the record establishes that in the only instance in which Petitioners sought relief, the internal tribunal, the IEB, was responsive.

Hence, the Court of Appeals was correct in affirming summary judgment for Local 160 on this ground. (Pet. App. 10)

C. Summary Judgment Was Proper.

Local 160 filed a motion to dismiss or for summary judgment along with four affidavits and several exhibits. Petitioners responded with affidavits and several exhibits. The District Court treated the motion as one for summary judgment because matters outside the pleadings were presented and considered (Pet. App. 1). Fed. R. Civ. P. 12(b). Examining all of the material filed by Petitioners, both lower courts found nothing factual tending to show fraud or collusion. Mere conclusions and bald allegations, rightly enough, were held to be insufficient. (Pet. App. 3-4, 10)

Petitioners argue that the "allegations of the complaint must be accepted as true for the purpose of a motion for summary judgment" and that the Court of Appeals erred in "completely ignoring the allegations of Plaintiffs' complaint." Petition, 18, 26. They further asert that they were not required to "set forth testimony which would or could be presented through witnesses in depositions and discovery and upon trial." Petition, 19.

Petitioners grievously misconstrue the rule. In opposing a motion for summary judgment, a party "may not rest upon the *mere allegation or denials* of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth *specific facts* showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e) (emphasis supplied). Further, the facts must be set forth on "personal knowledge." If a party does not so respond, summary judgment "shall" be entered against him. *Ibid.*

The cases cited by Petitioners themselves establish that the courts must go beyond the complaint in resolving a motion for summary judgment. They quote *Poller v. Columbia Broadcasting System,* 368 U.S. 464, 468 (1962), for the proposition that "[s]ummary judgment should be entered only when the pleadings, depositions, affidavits and admissions filed in the case 'show that [except as to the amount of damages] there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law' . . . ." Petition, 15. Another case cited by Petitioners, *Jenkins v. McKeithen,* 395 U.S. 411 (1969), states that allegations of a complaint are taken as true only on a motion to dismiss.

Thus, Petitioners may not rely on mere allegations and conclusions. They do anyway. They say, "[T]he facts and circumstances lead to the ineluctable *conclusion* that there was collusion and concert of actions between the defendants." Petition, 20 (emphasis supplied). Their affidavits do not set forth specific facts. They rely on, of all things, opinion: "He [Petitioner Casey] is of the *opinion,* and asserts as a fact, that this procedure was part of the collusive behavior of the defendants . . . ." (Pet. App. 21, emphasis supplied.)[10]

The lower courts correctly determined, therefore, that Petitioners failed to meet the standard for successfully opposing a motion for summary judgment. The record is clear that Local 160 made repeated and substantially

---

[10] Petitioners rely too on allegations of "fraud" and "farce." As Mr. Chief Justice Stone observed in another context, epithets such as these disclose nothing. *Snowden v. Hughes,* 321 U.S. 1, 10 (1943).

fruitful efforts over many years to represent the Template Makers in their confrontation with technological change. The Local did not act arbitrarily, discriminatorily or in bad faith. It did not control the arbitration but, in any event, there was no such conduct in that instance, either, and no basis for setting aside the award. Moreover, there was no genuine issue of material fact regarding the failure to exhaust internal remedies.

Affirmance of the summary judgment on these grounds was therefore proper.

D. The Statute Of Limitations Bars This Action.

Although federal law governs an action under Section 301 of the Labor Management Relations Act, 29 U.S.C. §185, against an employer for breach of collective bargaining agreement and a union for unfair representation, the timeliness of such an action is to be determined, as a matter of law, by reference to the appropriate state statute of limitations. *International Union v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966).

In Michigan, allegations of unfair representation are treated as a tort and, as such, are held to be subject to the three-year limitations period of Section 5805(7) of the Michigan Revised Judicature Act, Mich. Comp. Laws §600.5805(7).[11] *Washington v. Chrysler Corp.*, 68 Mich. App. 374 (1976); *Glowacki v. Motor Wheel Corp.*, 67 Mich. App. 448 (1976); *Field v. UAW Local 652*, 6 Mich. App. 140 (1967); *Kennedy v. Local 38, Brewery Workers*, 3 Mich. App. 700 (1966). The lower federal

[11] This part of the statute is set forth as Appendix B to this brief.

courts have consistently applied this statute in fair representation actions.[12]

Here, the sole union defendant is Local 160. The grievance passed out of its control in June, 1970. Its only action during the three years prior to the filing of the complaint in August, 1974 was to negotiate reinstatement of the EITS status for Template Makers, which resulted in their return to work from layoffs. Petitioners understandably do not complain about their return to work in the summer of 1974.

The focal point of Petitioners' complaint is the arbitration in June, 1973. But, there is no *genuine* issue regarding the fact that, as the Sixth Circuit noted, "[t]he International Union, which was not made a party to this case, processed the arbitration." (Pet. App. 10) Petitioners point to nothing in the record or their own affidavits (Pet. App. 20-26) to contradict the affidavit of International Representative Bolin to the effect that the "International Union . . . solely controls presentation of the Union's position before the Umpire . . . ." (App. A, 2) Petitioners do not and cannot allege an actual agency relationship wherein the International was merely an agent for the Local.

Nor do Petitioners allege that Local 160 is vicariously liable for the actions of the International Union in the arbitration. It would be unavailing for them to do so. This Court has recognized the autonomous nature of local unions and their international organizations. *See Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 393-396 (1922).

[12] *E.g., Pesola v. Inland Tool and Mfg. Co.*, 423 F. Supp. 30 (E.D. Mich. 1976); *Smart v. Ellis Trucking Co.*, 409 F. Supp. 129 (E.D. Mich. 1976); *Williams v. Dana Corp.*, 54 F.R.D. 473 (E.D. Mich. 1971).

Therefore, the statute of limitations bars the complaint against Local 160. Petitioners have managed to sue the wrong defendant regarding the arbitration. The decision below was correct on this alternative ground.

E. The Grievance Settlement Bars This Action

It is undisputed that after the arbitration was lost and GM again laid off the Template Makers, a new grievance was filed seeking their reinstatement. In settlement of the grievance, it was agreed that the EITS provision of the 1970 contract would be reinstated in the 1973 contract, and the Template Makers would be returned to work in the EITS classification. Further, GM required that Template Makers individually sign the settlement agreement. All except six signed the agreement and all but five returned to work under the settlement.

Petitioners seek to avoid the settlement and their acceptance of benefits thereunder by asserting, "All of the Plaintiffs did not agree so there was no valid agreement." Petition, 10. Petitioners cite no authority for their argument, and they do not elaborate.

For the same policy reasons set forth in Argument I-A above with respect to arbitration awards, a grievance settlement is binding unless an employee adequately pleads and proves a breach of the duty of fair representation. *Vaca*, 386 U.S. at 191. As demonstrated, no such breach is adequately pleaded here, especially with respect to the 1974 grievance settlement. The settlement has been adopted, embraced and fully utilized. It has not been attacked. Nor could it be attacked in this litigation, because the internal remedies were not invoked with respect to any complaint

Petitioners might make now about the settlement. See Argument I-B, *supra*.

Because Petitioners are bound by the grievance settlement which, as the Sixth Circuit found, "resolved questions with respect to their classification and seniority status" (Pet. App. 11), Petitioners may not maintain this action to obtain a different classification and status.

For this reason, and all the reasons set forth above, affirmance of summary judgment for the defendants was correct and further review is not warranted.

II.

THIS CASE IS NOT WORTHY OF REVIEW ON CERTIORARI.

To decide this matter, the Court needs only to refer to Supreme Court Rule 23.4: "The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be sufficient reason for denying his petition." The inadequacy of the petition in this regard is evident at first reading. The particulars will not be belabored.

The argument (Petition, 11) that the result in the lower courts is in conflict with *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976), had been shown to be without merit. The claim that the proceedings in this case have departed from the accepted and usual course is equally groundless. The grant of summary judgment was not unusual. In fact, on this record, it was mandatory.

It is alleged, but nowhere supported, that the decision of the Court of Appeals conflicts with decisions in other circuits. Petition, 11. No such conflict is identified, and none exists.

The petition presents no important, unsettled question of federal law. The Court has provided ample guidance. No special or important reasons for granting the writ of certiorari are amplified in the petition. On the contrary, while this case may not be unique in terms of the underlying problem — coping with the effects of automation, it is unique in its posture. The wrong defendant has been named, and it has a number of dispositive defenses, both procedural and substantive.

Thus, even if Petitioners believe that misapplication of *Hines* by the circuit courts is the key issue, this case could be decided on other grounds and the issue never reached. Even if there is some issue of public importance lurking in the petition, it is posed, at best, abstractly, and this case is not meaningful litigation for resolution of such an issue. *SS Monrosa v. Carbon Black Export*, 359 U.S. 180, 184 (1959). Certiorari is therefore not warranted.

CONCLUSION

The Court should therefore deny the petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

Bruce A. Miller
Duane F. Ice
MILLER, COHEN, MARTENS
& SUGERMAN, P.C.
2460 First National Building
Detroit, Michigan 48226

John A. Fillion
General Counsel
Jordan Rossen
M. Jay Whitman
Leonard R. Page
Associate General Counsel
INTERNATIONAL UNION, UAW
8000 East Jefferson Avenue
Detroit, Michigan 48214

Counsel for UAW Local 160

August 6, 1979

APPENDIX A

AFFIDAVIT BY JOHN BOLIN

(United States District Court
Eastern District of Michigan)

(Filed November 1, 1974)

STATE OF MICHIGAN
COUNTY OF WAYNE—ss.

John Bolin, being first duly sworn, deposes and says as follows:

I am an International Representative of the International Union, UAW. I am authorized to make this Affidavit.

I am assigned to the General Motors Department of the International Union, UAW. I have been in the UAW GM Department, primarily assigned to the UAW's GM Umpire work since 1962. I have been an International Representative since 1955. In my capacity as an International Representative between 1955 and 1962, I also did some arbitration work in which I presented the Union's position in regard to various grievances.

Under the Grievance and Umpire Procedure of the General Motors Corporation-UAW National Agreement, if the grievances are not adjusted at the Local Union level, in Step 3 they reach the control of the International Union. This procedure is spelled out in detail in Paragraph (37) of the December 15, 1967 Agreement between GM and the UAW. I attach a copy of this Agreement to my Affidavit. The Grievance and Umpire Procedure in the 1970 Agreement was

substantially the same. I also attach a copy of the 1970 Agreement. When a grievance reaches the level of Step 3, where it comes under control of the International Union, the UAW Regional Director and the Director of the General Motors Department assign members of their staffs to the case.

Local Unions no longer control the processing of grievances after they reach the International Union in Step 3. Of course, Local Union representatives usually continue to have contact with grievances through their advising and consulting with International Union representatives.

I am familiar with the case involving the Template Makers employed at the General Motors Technical Center and represented by UAW Local 160. The records of the General Motors Department of the UAW indicate that grievances involving the Template Makers reached the International Union General Motors Department in the Spring of 1970. The International Union, through its GM Department and its Region 1, solely controlled the Template Makers' grievance from and after that date. UAW Local 160 did not control said grievance from and after the Spring of 1970.

The Umpire procedure is described in Step 4 of the attached National Agreements between GM and the UAW. The International Union, through its Regional Office and through the GM Department of the UAW Umpire Staff solely controls presentation of the Union's position before the Umpire both in cases involving individual grievances and in cases involving policy grievances. In other words, Local Unions do not control the presentation of the Union's case before the Umpire. More specifically, UAW Local 160 did not control the

presentation of the grievance involving the Template Makers in the Umpire procedure. Of course, we consult with and hear the advice of Local Union representatives.

The Umpire staff of the General Motors Department of the UAW elected in its discretion to take this case to arbitration before the Umpire. I had been assigned to prepare this case by the GM Department of the UAW in late December 1972. I investigated the case. This included going to the plant and meeting individually with every one of the grievants, that is every Template Maker involved. It was my determination that this case should be returned to the Third Step level, so that additional evidence which I regarded as beneficial to the grievants and material to the case could be put in at that Step.

Two Third Step meetings in regard to the grievance were held in March, 1973. Appearing for the International Union at the Third Step meetings were me and Region 1 representative Frank Meloche. Joe Malotke, Eddie Rymal and N. Corniuk appeared for Local 160. At that step, I introduced additional documents and evidence, which I believed would help the case of the grievants. Nevertheless, in spite of our presentation, General Motors management stuck to its former position and refused to grant our grievance.

Accordingly, the International Union appealed the case to the Umpire. On or about June 3, 1973, prior to the Umpire hearing, I met with all of the Template Makers involved at the Region 1 headquarters of the UAW, which is located at 12000 East 12 Mile Road in Warren, Michigan. At that time, the Template Makers and I and other UAW representatives again reviewed

the individual Template Makers' qualifications, work history and any other pertinent facts which the Template Makers believed necessary to successfully pursue their case. In addition to reviewing their individual situations, which I had included in the brief which I was going to submit to the Umpire, I essentially presented to the Template Makers the position which I was going to present to the Umpire. At the meeting with the Template Makers on June 3, I read them my entire brief. I did not read them all parts of the history of the case, but that was available at that meeting. Attached is a copy of the Union's brief, with attachments to it involving the history of the case and other matters. At the conclusion of this meeting, some of the Template Makers in attendance expressed the opinion that the International had prepared a good case and that the case should be presented as we had proposed. To the best of my recollection, no Template Maker or anyone else at the meeting objected to the brief or to the manner in which I proposed to present the case to the Umpire. At this meeting, the Template Makers selected George Toth, Howard Casey and Leldon Bartlett to be representative witnesses for the Template Makers at the Umpire hearing. It is possible, though I am not certain about this, that Brother Farmer was also selected as a representative.

On June 5, 1973, the Umpire hearing was held before GM-UAW Umpire Rolf Valtin. Appearing on behalf of the grievants at the Umpire hearing, in addition to myself, were the following persons: Frank Meloche and Rudy Pale of the GM Department of the International Union, UAW. Present for Local 160 were Joe Malotke, the Chairman of the Fisher Body Engineering Unit of Local 160, and Local 160 Fisher Engineering Unit Shop

Committee members Eddie Rymal and N. Corniuk. In addition, individual Template Makers were present; these included, to my best recollection, George Toth, Howard Casey, Leldon Bartlett and George Farmer.

The main issue before the Umpire was the grieving Template Makers' demand that they be recognized as "journeymen" in the Metal worker engineering Bench and Layout (M.B.L.O.) skilled classification. The Template Makers had been seeking to be recognized as journeymen in said classification pursuant to Paragraph (178) item (b) of the 1967 National Agreement. (at page 115) If we had won the Umpire decision and the Template Makers would have been recognized as journeymen in the M.B.L.O. group; then under Paragraph (59) of the National Agreement, they could have bumped into that classification by taking with them their entire previous journeymen seniority. M.B.L.O. journeymen, with less seniority, could have been bumped out.

At the hearing, I presented the Union's brief to the Umpire as well as the attachments. The Union's brief and attachments are attached to my affidavit. The brief, which I presented the Umpire, was the same as the brief which all the Template Makers had approved two days earlier. I called the Union witnesses and they were subject to the cross examination by General Motors representatives, as well as any questions which the Umpire might have for them. Although the Umpire and various of the parties made their own notes, this hearing was not transcribed by an official reporter. At that time, very few Umpire proceedings were officially transcribed; and to my knowledge, none of them were transcribed where GM cases were involved.

At the June 3 meeting, it had been discussed between me and the Template Makers as to whether or not I should bring out the fact that the Template Makers had been reclassified in 1970 as EITS, which stands for Employees In Training with Seniority. It was my opinion, which I expressed at that June 3 meeting, that such information would hurt the Template Makers' claim that they were journeymen in the engineering M.B.L.O. classification, because that journeyman classification was higher than EITS. In other words, if the Umpire had realized that these claimants had been put in EITS, this would have them appeared less skilled and undermined their claim for the M.B.L.O. journeyman status. Furthermore, the grievance in question arose under the 1967 Agreement; thus, the 1970 EITS agreement was irrelevant. The Template Makers agreed with me at that June 3 meeting that this issue would not be raised.

During the Umpire hearing, one of the Template Makers, I believe it was George Toth but I am not certain, began to mention the 1970 Agreement which led to their EITS status. I called a recess. When we were in recess, I reminded the Template Maker about our meeting and understanding of June 3 and again expressed my opinion that his going into the EITS agreement would weaken our case before the Umpire. I think he said "okay." In any event, when he resumed testifying, he did not mention the EITS status anymore. If he had gone into it again, I would not have been in a physical position to stop him. In no other respect, to the best of my recollection and knowledge, did I discourage the Template Makers from testifying to anything they wanted to. None of the Template Makers

indicated to me during or after the hearing, apart from the one described incident, that he wanted to say anything else that was not said.

I presented the Union's argument to the best of my ability. I believe that the Union's position was correct and that the grievants were right. I did not collude with General Motors representatives or with the Umpire to cause a result, where the case would go against the Union in favor of General Motors. In my representation of the grievants when the case was at the GM Department of UAW level, including the Umpire proceedings, I acted in good faith and without hostility toward any of the grievants. I did not discriminate against any of the grievants but treated them the same way I would treat other Union members whom I was representing and whom I had represented in the past.

After the Umpire hearing was held, several of the Template Makers present at the hearing approached me and, to the best of my recollection, told me that I had done a credible job and that they were satisfied with the way I had presented the case. No Template Maker, who was present at the hearing, objected to the way I had presented the case. I do not remember the exact names of the Template Makers who came up to me after the hearing.

We received the Umpire decision on or about November 13, 1973. A copy of that decision is attached. The decision denied the grievance. I was very disappointed. To my recollection, I did not deal with the matter or represent any of the claimants in connection with that grievance, after the Umpire decision.

The above statements in my affidavit are made of my own personal knowledge, though my memory has been refreshed from examining some of the records under my control, including the attachments to my Umpire brief. I would be competent to testify to these matters in a court.

FURTHER, affiant sayeth not.

/s/ JOHN D. BOLIN

Subscribed and sworn to before me,
a Notary Public in and for the County
of Wayne, State of Michigan, this
30th day of October, 1974.

/s/ Elizabeth Pilot

My Commission expires 10-16-76.

APPENDIX B

Michigan Revised Judicature Act, Section 5805

Mich. Comp. Laws §600.5805

Section 5805. No person may bring or maintain any action to recover damages for injuries to persons or property unless, after the claim first accrued to himself or to someone through whom he claims, he commences the action within the periods of time prescribed by this section.

* * *

(7) The period of limitations is 3 years for all other actions to recover damages for injuries to persons and property.

SUPREME COURT, U.S.
FILED
AUG 13 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1869

DON REHAHN, et al.,
Petitioners,
v.
GENERAL MOTORS CORPORATION, and
LOCAL UNION 160, UAW,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY OF PETITIONERS TO THE RESPONDENT GENERAL MOTORS CORPORATION'S "OPPOSITION TO PETITION FOR WRIT OF CERTIORARI"

DAVIDOW & DAVIDOW
By: Larry S. Davidow
Attorneys for Petitioners
2910 Book Tower
Detroit, Michigan 48226
Tel: (313) 962-9144

Interstate Brief & Record Co., Wurlitzer Bldg., 1509 Broadway, Detroit, MI 48226
962-8745 962-8746

INDEX OF AUTHORITIES

	Page
Bishop v Wood, et al., 426 US 341, 48 L Ed 2d 684, 96 S Ct. 2084	6
Hines v Anchor Motor Frieght, Inc., 47 L Ed 2d 231, 424 US 554, 96 S Ct. 1048	5,6
Vaca v Sipes, 386 US 171, 17 L Ed 2d 842, 87 S Ct. 903	2,3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. ——

DON REHAHN, et al.,
Petitioners,
v.
GENERAL MOTORS CORPORATION, and
LOCAL UNION 160, UAW,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY OF PETITIONERS TO THE RESPONDENT GENERAL MOTORS CORPORATION'S "OPPOSITION TO PETITION FOR WRIT OF CERTIORARI"

I.

Petitioners, 36 employees of Respondent General Motors Corporation (hereinafter referred to as GM), herewith submit their reply to the "Opposition of Respondent GM" to their petition for the Issuance of a Writ of Certiorari to the Court of Appeals for the Sixth Circuit.

We feel compelled to file this reply on behalf of the Petitioners because of the many inaccuracies of the facts and the law in Respondent GM's "Opposition".

II.

Petitioners, GM corporation employees at the "Tech Center" in the City of Warren, Michigan, originally filed their suit against respondents-defendants in the Circuit Court for Wayne County, Michigan. Respondents filed their motions to remove the case to the U.S. District Court, Eastern District of Michigan, Southern Division, on the ground that the District Court had original jurisdiction by virtue of the Labor-Management Relations Act, 28 USC 185.

The motions were granted, despite the objection filed on behalf of the petitioners, that the jurisdiction was concurrent and that the Circuit Court for Wayne County had jurisdiction.

In the case of *Vaca v Sipes*, 386 US 171, 17 L Ed 2d, 842, 87 S Ct 903, the opinion of Mr. Justice White, speaking for the court, (848)

> *"although we conclude that state courts have jurisdiction in this type of case, we hold that* Federal law governs." (emphasis ours)

In the *Vaca* case, there had been a jury trial on the merits. The case involved facts somewhat similar to the case at bar — a discharged employee asserted that he had been wrongfully discharged, and that the union had breached its duty of fair representation. Mr. Justice

White reviewed a number of decisions of the Supreme Court in reference to the duty of the unions, and said:

> "It is now well established that, as the exclusive bargaining representative of the employees . . . the union had a statutory duty fairly to represent all of those employees, both in its collective bargaining . . . *and in its enforcement of the resulting collective bargaining agreement. . . .*"(our emphasis)

III.

Respondent GM, in its selected excerpts from Supreme Court decisions, creates an erroneous situation not existent in the case at bar. The arguments presented by the respondent clearly demonstrate the position of the petitioners — that there are material disputed questions of fact which could not and should not be determined on a motion for summary judgment. There should be a trial on the merits. Moreover, the petitioners not only present the failure of the U.S. District Court and the Court of Appeals for the Sixth Circuit to be governed by this well established rule of law, but they also present an indefensible collusion between the two respondents, involving an utter lack of good faith and lack of fair representation on the part of the local union, inter alia, in the face of the action of the International Executive Board of the International UAW sustaining the position of the petitioners that they be reinstated with their attendant seniority.

IV.

There was no justification for resorting to arbitration. The Union-Management Agreement established "plant seniority". The petitioners in 1970 having plant seniority from 13 to 20 years at the GM "Tech Center" should have been continued in their employment and not be replaced by recent newcomers in defendant Local Union 160, who came over from the Ternstedt Plant in Detroit, to the Tech Center in 1972.

Arbitration was uncalled for. The International Executive Board of the International UAW had decided that the petitioners were entitled to plant seniority, and directed the local union to proceed to enforce the union-management agreement.

The arbitration and the umpire's decision were a violation of the language of the union-management agreement. Paragraph 47 of said agreement provides:

> *"The umpire shall have no power to add to or subtract from or modify any of the terms of this agreement or any agreement made supplementary thereto."* (emphasis ours)

The umpire, through the collusion of the respondents, "blotted" out paragraph 59 of the Union-Management agreement which established plant seniority and virtually changed the terms of said agreement. By this procedure, petitioners, all of whom are skilled journeymen, were stripped of their seniority when they were recalled by GM at the end of over two years of unemployment, and were put at the bottom of

the seniority totem pole, with attendant loss of substantial rights and benefits, as if they were new employees. The respondents by their collusion have attempted to cover-up their indefensible wrong doing.

Joe Malotke, defendant local union Plant Chairman, boasted to some of the petitioners, in May 1974, that if he had been on their side, they would not have lost the umpire decision.

Respondents have added insult to injury by claiming the validity of the collusive arbitration proceeding.

On p. 6 of Respondent's "Opposition", an excerpt is quoted from the case of *Hines v Anchor Motor Freight, Inc.*, 47 L Ed 2d 231, in support of its position. The entire paragraph from which the excerpt is taken reads:

(P 243)

> "even though under Vaca the employer may not insist on exhaustion of grievance procedures when the union has breached its representation duty, it is urged that when the procedures have been followed and a decision favorable to the employer announced, the employer must be protected from relitigation by the express contractual provision declaring a decision to be final and binding. *We disagree. The union's breach of duty relieves the employee of an express or implied requirement that disputes be settled through contractual grievance procedures; if it seriously undermines the integrity of the arbitral process the union's breach also removes the bar of the finality of the provisions of the contract.* (our emphasis)

We respectfully submit that in the case at bar, cases cited by respondent GM have to do with situations involving arbitration in a manner wholly foreign and distinct from the facts in the case at bar, where petitioners claim that there was no need or reason for arbitration. Their position had been sustained by the International Executive Board of the International UAW, which held that they were entitled to the protection of the plant seniority provided in the union-Management agreement and directed defendant local union to proceed to enforce the agreement provisions.

V.

It is the position of the petitioners that the lower courts acted on an erroneous conclusion of fact and failed to recognize the Rule of Law in the matter of motions for Summary Judgment; both the District Court and the Court of Appeals for the 6th Circuit utterly failed to abide by the Rule of law, as well as the decision of this Court in the *Hines v Anchor Motor Freight*, case, *supra*. There are material disputed questions of fact, and summary judgments should not have been granted.

Bishop v Wood et al., 426 US 341, 48 L Ed 2d 684, 96 S Ct. 2084.

> (691) "(6a) In our appraisal of petitioner's claim we must accept his version of the facts since the District Court granted summary judgment against him."

CONCLUSION

Petitioners respectfully submit that they should not have been made the victims of the summary judgments rendered against them. There was no trial. There are many material disputed questions of fact which can only be determined upon a trial on the merits. They were denied the benefit of the Rule of Law promulgated over many years and repeatedly upheld by this Court in reference to motions for summary judgment.

We respectfully urge that the petitioners should have their day in Court; that the facts, the law, and the equities unite in praying that this Court exercise its discretion to grant and issue a Writ of Certiorari to the Circuit Court of Appeals for the Sixth Circuit.

Respectfully submitted,

/s/ Larry S. Davidow
Attorney for Petitioners
Davidow & Davidow
2910 Book Tower
Detroit, Michigan 48226
Tel: 313-962 9144

Dated at Detroit, Michigan,
August 8th, 1979

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1065

GENERAL MOTORS CORPORATION,

Petitioner,

v.

UNITED STATES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES
IN OPPOSITION

WADE H. McCREE, JR.
Solicitor General

Department of Justice
Washington, D.C. 20530
(202) 633-2217

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1869

DON REHAHN, et al.,
Petitioners,
v.
GENERAL MOTORS CORPORATION, and
LOCAL UNION 160, UAW,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY OF PETITIONERS TO THE "BRIEF FOR UAW LOCAL 160 IN OPPOSITION"

I.

Petitioners (36 employees of Respondent GM, and members of Respondent Local 160, UAW,) herewith submit their reply to the Brief of Respondent Local 160, "In Opposition" to Petitioners' application for issuance

of Writ of Certiorari, and say that they are constrained to make this brief reply to some of the inaccurate assertions of Respondent Local 160 contained in its "Opposition".

II.

Respondent Local 160 asserts that the International Union took control of the grievance; that it was thereafter responsible for all strategy decisions, etc. This assertion is wholly without foundation. The International Union UAW, through its International Executive Board, sustained the position of petitioners, and directed Local 160 to proceed to carry into effect Par. 59 of the Union-Management agreement, which established "plant seniority" for the petitioners, as claimed.

When Respondent Local 160 was confronted with the opportunity of pressing forward as directed by the International Union, a special meeting was called between the shop committeemen of Respondent Local, and representatives of Respondent General Motors. The meeting was held on June 28, 1972, to determine management's position regarding implementation of Par. 59. The minutes of the meeting show, *inter alia*, the following: "In response to management's query as to whether the above committee's request is to be interpreted as a proposal, the committee stated IT IS NOT MAKING SUCH A PROPOSAL TO LOCAL MANAGEMENT, NOR DOES IT INTEND TO MAKE SUCH A PROPOSAL." (our emphasis)

III.

Respondent Local 160, in page 8 of its "Opposition" asserts "the Impartial Umpire determined that paragraph 178 did not apply to the Template Makers and they were not entitled to journeymen status or, of course, to transfer into journeymen positions under paragraph 59."

Petitioners were and are all journeymen; their status as such could not be wiped out by the collusive action of the Respondents. Under Par. 59 of the union-management agreement, whatever their status, they were entitled to plant seniority, and it was so held by the International UAW. They should have been kept working instead of being laid off for upwards of two years.

IV.

One could write a lengthy refutation of the assertions of Respondents, which would only more clearly demonstrate that in a light most favorable to the Respondents there are serious and material disputed questions of fact involved in the instant case, which should never justify summary judgment.

V.

One further illustration of the calculated disregard of the facts by Respondent Local 160 has to do with the reinstatement of petitioners to employment by respondent General Motors. Petitioners had been unemployed for upwards of two years; they were called

back to work after counsel for petitioners had advised respondents by written communication that he was then representing the petitioners, and desired a conference to resolve the grievance of petitioners.

At this juncture, Respondents sought to take advantage of the situation by insisting upon *all* of the petitioners signing an agreement waiving their rights as journeymen and claims for damages. Petitioners were advised by Respondent Local 160 that "the document which they were required to sign had to be signed by all of them, "if one of you don't want to sign — that would not be sufficient; it would have to be 100% * * * * * if one of you feel you don't want to sign, then we're not going * * * * * then we can't make the agreement, because management just isn't going to buy it. It's only going to buy it if it is 100% agreement, because they don't want to get back into another appeal procedure again."

VI.

It is undisputed that all of the petitioners did not sign; there never was any agreement; petitioners' grievance was not settled; under the circumstances, petitioners had no recourse except to institute their suit in the instant case.

Respectfully submitted,

DAVIDOW & DAVIDOW
By: Larry S. Davidow
Attorneys for Petitioners
2910 Book Tower
Detroit, Michigan 48226
Tel: (313) 962-9144

Dated at Detroit, Michigan,
August 27, 1979

TABLE OF CONTENTS

	Page
Index to Authorities	i
Petition for Rehearing and Reconsideration of Petition for Writ of Certiorari	1
Rule of Law re Summary Judgement Ignored	2
Court of Appeals' Erroneous Assertions of Disputed Material Facts	3
17 to 31 Years' Seniority Rights of Petitioners	6
Failure of Local Union to Fairly Represent Petitioners	7
Petitioners Reduced to "Employee in Training Status"	11
Conclusion	12

INDEX TO AUTHORITIES

	Page
Cases:	
Adickes v Kress Co, 398 US 144, 26 L Ed 2d 142, 154 (1970)	3
Bishop v Wood, 426 US 341, 48 L Ed 2d 684, 96 S Ct 2074 (1976)	3
Gondeck v Pan Am World Airways, 382 US 25, 15 L Ed 2d 21, 86 S Ct 153	9
Hines v Anchor Motor Freight Inc, et al, 424 US 554, 47 L Ed 2d 231, 96 S Ct 1048 (1976)	9

Page

Hughes v American Jawa, Ltd, 529 F2d 21, 23, (1976) 3

Jenkins v McKeithern, 395 US 411, 23 L Ed 2d 404, 89 S Ct 1843 (1969) 3

Poller v Columbia Broadcasting System, 368 US 464, 7 L Ed 2d 458 (1962) 3

IN THE

Supreme Court of the United States

No. 78-1869

OCTOBER TERM, 1979

DON REHAHN, et al.,
Petitioners,
v.
GENERAL MOTORS CORPORATION
and LOCAL UNION 160, UAW,
Respondents.

PETITION FOR REHEARING AND RECONSIDERATION OF WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Now come the above petitioners and respectfully pray for a rehearing (reconsideration) of their petition for Writ of Certiorari. This Court denied their petition for such writ on October 1, 1979.

As introduction to this petition for rehearing (reconsideration), we desire to call the court's attention to the following excerpt from the affidavit of Don Rehahn, one of the petitioners, as follows:

> "Deponent further says, as he is informed and believes it to be true, that at a management meeting of Defendant General Motors, just prior to the ratification of the 1970 contract, one of the supervisors in the Template department of Defendant General Motors, said that General Motors was letting themselves in for a law suit if they agreed with Joe Malotke and his Committee to strip the Template makers of their seniority and make them "EITS" (Employee in Training) in various departments. *Charles Gaudet, personnel director of Defendant General Motors and who was Chairing the meeting, told the supervisor to shut his mouth. That 'if Joe Malotke and his Committee wanted "to screw their own men, let them do it." ' " (our emphasis)*

RULE OF LAW RE SUMMARY JUDGMENT IGNORED

Both the U.S. District Court and the U.S. Court of Appeals, 6th Circuit, ignored the rule of law that on motions for summary judgment the court must view all material disputed facts and the logical and reasonable inferences to be drawn therefrom in the light most favorable to the party opposing the motion; for the purpose of the motion the material allegations of the complaint must be taken as true and the complaint must be liberally construed in favor of the Plaintiff. FARBWERKE v. HOERSCHST, 589 F2d 795 (1979)

As the moving parties, the respondents had the burden of showing the absence of a genuine issue as to any material fact, and that they were entitled to judgment as a matter of law, *for the purpose of the rule is not to cut litigants off from the right to trial if they have issues to try.* (our emphasis)

HUGHES v AMERICAN JAWA, LTD, 529 F2d 21, 23 (1976)

JENKINS v McKEITHERN, 395 US 411, 23 L Ed 2d 404, 89 S Ct. 1843, 416 (1969)

BISHOP v WOOD, 426 US 341, 48 L Ed 2d 684, 96 S Ct 2074, 691 (1976)

ADICKES v KRESS & CO., 398 US 144, 26 L Ed 2d 142, 154 (1970)

POLLER v COLUMBIA BROADCASTING SYSTEM, 368 US 464, 7 L Ed 2d 458, 461-4 (1962)

THE COURT OF APPEALS' ERRONEOUS ASSERTIONS OF DISPUTED MATERIAL FACTS

The U.S. Court of Appeals for the 6th Circuit not only refused to be governed by the unbroken line of decisions governing motions for summary judgment, but added insult to injury in its opinion, by making alleged statements of fact that are palpably untrue: FOR INSTANCE:

FICTION: (COURT OF APPEALS ASSERTION) "The International Union, which is not made a party in this case, processed the arbitration."

FACT: This is not only flatly denied by Plaintiffs, but the fact is that the International Executive Board of the UAW sustained Plainitiffs' claim to enforce their seniority right as expressed in the Union-Management Agreement. (App. 16, A17)

FICTION: (COURT OF APPEALS ASSERTION) "The arbitrator decided in favor of the company. We find no basis for us to interfere with the decision of the arbitrator."

FACT: The Plaintiffs charged collusion between the defendants which made a farce of the so-called arbitration proceeding, and amounted to a fraud upon them, inasmuch as the Union-Management Agreement positively secured their seniority rights. Moreover, this protection was beyond the power of the Arbitrator to change.

FICTION: (COURT OF APPEALS ASSERTION) "Plaintiffs complain of the strategy adopted by the International Union at the Arbitration Hearing."

FACT: The fact is the International Union did not participate in the Arbitration Proceeding. The affidavits of Howard Casey, Edwin Januszkowski, Mitchell J. Foksa, Donald A. Wisniewski support Plaintiffs' allegations that the Arbitration Hearing was a farce and should never have been had.

FICTION: (COURT OF APPEALS ASSERTION) "We find no evidence of fraud or collusion by the union with the company."

FACT: Plaintiffs again reiterate that the International Union was not involved in the Arbitration matter; it had already held for the Plaintiffs, and supported their position, i.e. that they were entitled to the seniority secured to them by Par. 59 of the Union-Management

Agreement and sought to have the Defendant Local Union comply accordingly. The Defendants conspired to and did defeat this.

FICTION: (COURT OF APPEALS ASSERTION) "Relative to the claim by the Plaintiffs that the unions did not fairly represent them in connection with the handling of the grievance, the Plaintiffs did not exhaust reasonable internal union remedies which were provided for the UAW Constitution."

FACT: The Court made an erroneous conclusion of a material disputed question of fact. The affidavits of Howard Casey and Don Rehahn clearly show that all internal procedures were exhausted; the International Executive Board had decided in Plaintiffs' favor, and sought to have the Defendants abide by the terms of the Union-Management agreement. Plaintiffs contend that the Decision of this Court in the *Hines v Anchor Motor Freight, Inc., et al.*, 424 US 554, 47 L Ed 231, 96 S Ct 1048 (1976) also supports their claim.

FICTION: (COURT OF APPEALS ASSERTION) "Furthermore, all except six of the Plaintiffs approved an agreement between the Local and the Company, which resolved questions with respect to their classification seniority status."

FACT: The Plaintiffs at no time waived their rights to seniority under the Union-Management Agreement. Joseph Malotke, Plant Chairman of defendant Local 160 at a special meeting held May 16, 1974, stated that he had the "document" which they were required to

> sign; that all of them (Plaintiffs) would have to sign; "if one of you don't want to sign that would not be sufficient; that it would have to be 100% . . . . If one of you feel that you don't want to go, then we're not going. . . . . Then we can't make the agreement, because management just isn't going to buy it. It's only going to buy it if it is 100% agreement because they don't want to get back into another appeal procedure again. . . . ."

It is clearly apparent that the U.S. Court of Appeals, in its opinion, stated alleged facts in derogation of petitioner's claim which it had no right to assert as "findings of facts"; it is not even the function of the Court upon a Jury trial to make such findings. It is for the Jury to determine the facts.

17 to 31 YEARS' SENIORITY RIGHTS OF PETITIONERS

The 36 petitioners were protected in their seniority status by the Union-Management Agreement, Article 59, which states:

> "When changes in methods, products or policies would otherwise require the permanent laying off of employees, the seniority of the displaced employees shall become plant-wide and they shall be transferred out of the group in line with their seniority to work they are capable of doing, as comparable to the work they have been doing as may be available at the rate for the job to which they have been transferred."

The petitioners in 1974 had plant seniority running from 17 to 31 years. They were all members of the Defendant Local 160 and had been for many years. A short time before 1972 the employees of Defendant General Motors working at the Ternstedt Plant on the west side of Detroit were transferred to the Tech Center Plant of Defendant General Motors in the City of Warren, Michigan, who then became members of Defendant Local 160 (numbering several thousand). These newcomers from Ternstedt Plant replaced the Plaintiffs in their jobs and took over the local union. This condition may explain why Defendant Local 160 and Defendant General Motors brought about their joint action to disregard Art. 59 of the Union-Management Agreement. The petitioners, all journeymen with superior plant seniority, were layed off. The Defendant Local 160 acted through its plant chairman, Joe Malotke in collusion with Defendant General Motors, which resulted in the discharge of the 36 petitioners.

FAILURE OF LOCAL UNION TO FAIRLY REPRESENT PETITIONERS

Defendant Local 160 failed to fairly represent the petitioners by a contemptuous disregard of their seniority rights, and affirmatively victimized the petitioners by working in agreement with Defendant General Motors to bring about their discharge.

We again call attention to the affidavit of Don Rehahn (supra), when one of the supervisors in the Template department of Defendant General Motors said that General Motors was letting themselves in for a law suit if they agreed with Joe Malotke and his Committee to strip the Template makers of their seniority and

make them "EITS" in various departments. Charles Gaudet, personnel director of Defendant General Motors, and who was chairing the meeting, told the supervisor to shut his mouth. That if Joe Malotke and his committee wanted "to screw their own men, let them do it."

This collusion is also evidenced by the affidavits of three of the petitioners who, following a meeting of the Template makers on May 16, 1974, were told by plant chairman, Joe Malotke of Defendant Local 160, if he had been on the side of the Template makers they would not have lost the Umpire Decision.

The refusal of Defendant Local 160 through its officials, Joe Malotke and his committee, to fairly and properly represent petitioners is demonstrated by said Local Union disregarding the order of the International Executive Board of the UAW to implement its finding in favor of the petitioners and to enforce Art. 59, Labor-Management Agreement.

Another facet of the controversy which highlights the collusion between the respondents is contained in the affidavit of Don Rehahn. It would indicate that respondent General Motors was fully aware of its participation in supporting Defendant Local 160, and in the discharge of the petitioners. All of this violated and ignored the clear dictum of Art. 59 of the Labor-Management Agreement, (supra) which reads as follows:

> "When changes in methods, products or policies would otherwise require the permanent laying

> off of employees, the seniority of the displaced employees shall become plant-wide and they shall be transferred out of the group in line with their seniority to work they are capable of doing, as comparable to the work they have been doing as may be available at the rate for the job to which they have been transferred."

GONDECK v PAN AM. WORLD AIRWAYS,
382 US 25, 15 L Ed 2d 21, 86 S Ct 153

Petition for a rehearing was out of time but the Supreme Court granted relief and vacated the order denying certiorari, granted the petition for certiorari and reversed the judgment of the Court of Appeals.

> "We are now apprised, however, of intervening circumstances of substantial . . . effect, justifying application of the established doctrine that *'the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules.'* " (our emphasis)

HINES v ANCHOR MOTOR FREIGHT, INC.
424 US 554, 47 L Ed 2d 231, 238,
243, 246, 96 S Ct 1048 (1976)

This case involves some of the issues raised in the case at bar. It also serves to differentiate dicta from pertinent rulings and decisions of the several cases reviewed by the Court.

> "After reviewing the allegations and the record before it, the Court of Appeals concluded that there were sufficient facts from which bad faith and arbitrary conduct on the part of the Local

Union could be inferred by the trier of fact and that petitioners should have been afforded an opportunity to prove their charges. To this extent the judgment of the District Court was reversed."

This supports the position of the petitioners in the case at bar, and again:

"Even though under Vaca the employer may not insist on exhaustion of grievance procedures when the union has breached its representation duty, it is urged that when the procedures have been followed and a decision favorable to the employer announced, the employer must be protected from relitigation by the express contractual provision declaring a decision to be final and binding. *We disagree. The union's breach of duty relieves the employee of an express or implied requirement that disputes be settled through contractual grievance procedures; if it seriously undermines the integrity of the arbitral process the union's breach also removes the bar of the finality provision of the contract.*" (our emphasis)

"Petitioners, if they prove an erroneous discharge and the Union's breach of duty tainting the decision of the joint committee, are entitled to an appropriate remedy against the employer as well as the Union. It was error to affirm the District Court's final dismissal of petitioners' action against Anchor. To this extent the judgment of the Court of Appeals is reversed."

PETITIONERS REDUCED TO "EMPLOYEE IN TRAINING STATUS"

All of the Plaintiffs, having had plant seniority from 17 to 31 years, should have been continuously employed from 1970 up to and including now as well as in the future. Respondent, General Motors, working in collusion with Defendant Local 160 did bring about a claimed re-classification of the Plaintiffs, allegedly abolishing their work classification (supra), and claimed their retention unnecessary. This concerted action of the respondents was perpetrated with fraudulent purpose inasmuch as the work done by the Plaintiffs has never been abandoned or discontinued.

It is difficult to understand, and certainly to defend, the decision of the District Court and the affirmance by the Court of Appeals, 6th Circuit, in disregarding and refusing to follow the rule of law, upheld in the compelling language of this Court in the cases heretofore cited in the Petition for Certiorari.

By the erroneous decisions of the U.S. District Court and the U.S. Court of Appeals for the 6th Circuit, the petitioners (Plaintiffs) have been deprived of their right to full employment for 2 years. They have lost substantial compensation for this period of time; they have been stripped of the plant seniority with a loss of fringe benefits, and have been put back to work as beginners having to start seniority all over again, a status described as "EITS" — "Employee in Training."

Verily, as Defendant General Motors so accurately and obscenely described petitioners (Plaintiffs) treatment, they have been "screwed" and seemingly with no redress.

CONCLUSION

Petitioners have been denied the equal protection of the law and have been deprived of their property without due process of law, in violation of the 14th Amendment to the Constitution of the U.S.

Petitioners prayerfully hope that the Supreme Court of the U.S. will afford petitioners their opportunity for their day in court to obtain a redress of their indefensible and shocking grievance.

Respectfully submitted,

L. S. Davidow

DAVIDOW & DAVIDOW
2910 Book Tower
Detroit, Michigan 48226
Tel: (313) 962-9144

Dated at Detroit, Michigan October 22, 1979